

1. Plaintiffs initiated this action in the General Court of Justice, Superior Court Division, Wake County, North Carolina, Civil Action No. 19-CVS-12667, on September 27, 2019, by filing the Complaint.

2. The Legislative Defendants were served with the Summons and Complaint on September 30, 2019. The North Carolina Department of Justice and Attorney General, who is not a party, was served on September 27, 2019. A complete copy of all process, pleadings, and orders served upon Legislative Defendants is attached as **Exhibit 1** to this Notice of Removal. 28 U.S.C. § 1446(a). These documents constitute the pleadings to date.

3. As required by 28 U.S.C. § 1446(b), this Notice of Removal is filed with this Court within thirty (30) days of service of process on the Legislative Defendants and on the North Carolina Department of Justice and Attorney General.

4. The Complaint purports to allege claims under the North Carolina Constitution.

5. Nevertheless, removal here is appropriate under 28 U.S.C. § 1443(2).

6. Removal is appropriate under 28 U.S.C. § 1443(2), which provides for removal of state-court actions against state officials “for refusing to do any act on the ground that would be inconsistent” with “any [federal] law providing for equal rights....”

7. This provision is satisfied, and removal is appropriate, where there is “a colorable conflict between state and federal law.” *White v. Wellington*, 627 F.2d 582, 587 (2d Cir. 1980) (quotations omitted). The state official’s federal-law defense need not ultimately be meritorious so long as there is a colorable conflict between the official’s

federal-law duties under equal-rights law and the alleged state-law duties. *See, e.g., New Haven Firefighters Local 825 v. City of New Haven*, 2004 WL 2381739, at *1 (D. Conn. Sept. 28, 2004).

8. The Complaint seeks equitable relief from all Defendants, including the General Assembly. The equitable relief is not limited to enjoining the current congressional redistricting plan; Plaintiffs also demand “a new congressional districting plan that complies with” their view of the North Carolina Constitution. Complaint, Prayer for Relief ¶ (c); *see also* Compl. ¶ 5.

9. Plaintiffs’ requested relief, to be effective, will require affirmative cooperation from some agent of North Carolina. The General Assembly is the body responsible for redistricting under the North Carolina Constitution, and Plaintiffs’ need for equitable relief from the General Assembly stems from that role. Further, because an official-capacity suit is, in truth, a suit against the State, and all its component parts, Plaintiffs’ requested relief will require the affirmative cooperation of the State itself. Their failure to name the State specifically as a party does not change the fundamental character of their suit as one against the state for equitable relief.

10. Affirmative cooperation can be refused. Plaintiffs’ demand for a court-drawn map if the General Assembly does not redistrict in accord with Plaintiffs’ state-law theory is a form of state-court coercion that triggers the possibility of refusal under 28 U.S.C. § 1443(2).

11. Independently, Plaintiffs will seek to impose an obligation on North Carolina, sued through its agents, to administer elections under Plaintiffs’ preferred

redistricting scheme. The General Assembly, through its officers named as Defendants here, represents the State according to state statute. By comparison, the members of the North Carolina Board of Ethics and Elections Enforcement are not tasked with representing the State by any statute. The General Assembly, speaking for the State, can refuse Plaintiffs' demand for affirmative state cooperation in this second, independent sense.

12. In both these independent senses, the General Assembly's resistance to Plaintiffs' state-law theory qualifies as "refusing" an "act" within the meaning of 28 U.S.C. § 1443(2). The relevant "acts" here include both the act necessary to create new legislation and the State's "act" of implementing that new legislation.

13. Section 2 of the Voting Rights Act ("VRA") applies to the entire State of North Carolina. VRA § 2 is a federal-law provision providing for "equal rights" within the meaning of 28 U.S.C. § 1443(2).

14. The Equal Protection Clause of the Constitution applies to the entire state of North Carolina. The Equal Protection Clause is a federal-law provision providing for "equal rights" within the meaning of 28 U.S.C. § 1443(2).

15. A colorable conflict between state constitutional redistricting requirements and the dictates of the Voting Rights Act and Equal Protection Clause supports removal under Section 1443(2). *Cavanagh v. Brock*, 577 F. Supp. 176, 180 (E.D.N.C. 1983).

16. Representative David R. Lewis is a state official covered under Section 1443(2). Representative Lewis is Senior Chairman of the House Select Committee on Redistricting. Representative Lewis has been sued in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law

requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from Representative Lewis in his official capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

17. Senator Ralphs E. Hise, Jr., is a state official covered under Section 1443(2). Senator Hise is Chairman of the Senate Committee on Redistricting. Senator Hise has been sued in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from Senator Hise in his official capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

18. Senator Warren Daniel is a state official covered under Section 1443(2). Senator Daniel is Co-Chairman of the Senate Committee on Redistricting. Senator Daniel has been sued in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from Senator Daniel in his official

capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

19. Senator Paul Newton is a state official covered under Section 1443(2). Senator Daniel is Co-Chairman of the Senate Committee on Redistricting. Senator Newton has been sued in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from Senator Newton in his official capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

20. Speaker Timothy K. Moore is a state official covered under Section 1443(2). Speaker Moore is Speaker of the House of Representatives. Speaker Moore has been sued in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from Speaker Moore in his official capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

21. President Philip E. Berger is a state official covered under Section 1443(2). President Berger is President Pro Tempore of the Senate. President Berger has been sued

in this matter in his official capacity as a representative of the General Assembly, which is alleged to have violated state-law requirements related to redistricting and against which affirmative equitable relief is sought requiring a new redistricting plan or, alternatively, state-court seizure of the General Assembly's redistricting authority. But, as described below, the affirmative relief sought from President Berger in his official capacity as a representative of the General Assembly and the State would be inconsistent with federal law that protects racial equality in voting.

22. The Legislative Defendants have all been sued in their official capacities on behalf of the General Assembly, which enacted the congressional plan challenged. They have been sued for the purpose of obtaining affirmative relief in the form of a new plan to be administered, under compulsion of court order, by North Carolina—which Legislative Defendants also represent—in future elections. Plaintiffs claim that the 2016 maps violate provisions of the North Carolina Constitution. The Prayer for Relief asks this Court to enjoin the Legislative Defendants from taking these actions and to require the Legislative Defendants to re-draw the 2016 plans or, alternatively, seize the Legislative Defendants' legislative power and redistrict the state itself.

23. As representatives of the State of North Carolina and the General Assembly, which exercises the State's sovereignty in the most immediate way, Legislative Defendants are empowered to waive the State's sovereign immunity for a suit purporting to enforce state law against the State court. By filing this motion to remand, they waive the State's sovereign immunity for the purposes of this case.

24. Both the actions Plaintiffs demand and their theories of relief create direct conflicts with federal law guaranteeing equal protection—namely, the Voting Rights Act and the Equal Protection Clause.

A. The Voting Rights Act

25. One conflict arises because one of the congressional districts challenged satisfies the State’s obligations under the Voting Rights Act, and Plaintiffs demand that the racial composition of this district be dramatically altered. In particular, Plaintiffs’ Complaint identifies multiple districts as containing a high percentage of Democratic Party constituents. They refer to these districts as “packed.” But, in North Carolina, there is a strong correlation between racial and political identity, so removing Democratic Party constituents from these districts will necessary reduce the percentage of African American voting-age persons.

26. For example, paragraphs 78-82 of the Complaint attack Congressional District 1 (“CD 1”). Plaintiffs claim that CD 1 is a “packed Democratic district.” Compl. ¶ 78. They assert that the packing is accomplished by placing the “most Democratic VTDs” in certain counties in CD 1 instead of “more moderate and Republican VTDs.” Compl. ¶¶ 80-81. The Complaint therefore calls for the legislature to replace “Democratic VTDs” with “more moderate and Republican VTDs.”

27. But the Legislative Defendants intend to defend this charge, *inter alia*, by presenting evidence demonstrating that CD 1 is a minority “crossover” district. For example, in *Harris v. McCrory*, 159 F.Supp.3d 600 (M.D.N.C. 2016), Congressman Butterfield testified about the appropriate level of BVAP in CD 1. A copy of this testimony

is attached as **Exhibit 2**. Congressman Butterfield has been the U.S. Representative from CD 1 since 2004. Ex. 2, at 160. Prior to that, he held numerous elected offices. Ex. 2, at 158-60. During private practice as a lawyer in this area of the state, Congressman Butterfield engaged in voting rights litigation. Ex. 2, at 159. As such, he is intimately familiar with the voting patterns in CD 1 and the extent to which racially polarized voting affects elections. Ex. 2 at 172-75, 199-200. In *Harris*, Congressman Butterfield testified that in his experience two out of three white voters in the area encompassing CD 1 would not vote for a black candidate. Ex. 2 at 174, 199-200. In his experience, in order for black voters to be able to elect their candidate of choice in CD 1, the district's BVAP should ideally be at 47% and no lower than 45%. Ex. 2 at 201-02. The current BVAP of the district is 44.46% (https://www3.ncleg.gov/GIS/Download/District_Plans/DB_2016/Congress/2016_Contingent_Congressional_Plan_-_Corrected/Reports/DistrictStats/SingleDistAdobe/rptDistrictStats-1.pdf), just shy of the 45% level at which Congressman Butterfield testified is necessary for black voters to elect their candidate of choice. As such, the district is protected from being intentionally dismantled under VRA § 2.

28. To be sure, race was not the predominant factor in the creation of CD1, but the VRA does not turn on motive, and recent Supreme Court precedent anticipates that VRA districts should be drawn with minimal or no attention to racial data. A VRA plaintiff would not have to prove anything with respect to the intent of how CD1 was drawn to prove a VRA violation, and intent has no bearing on whether the VRA protects it from being dismantled, as Plaintiffs demand.

29. Although VRA § 2 cannot be used as a sword to require states to create crossover districts, the Supreme Court has made clear that states may create crossover districts “as a matter of legislative choice or discretion” in order “to choose their own method of complying with the Voting Rights Act.” *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009). Thus, creating a crossover district is a valid *shield* against a Voting Rights Act claim that might otherwise be meritorious. CD 1, as a crossover district, therefore complies with the Voting Rights Act and precludes a valid claim of liability under a law guaranteeing equality.

30. Plaintiffs’ theory of state law—which the Legislative Defendants contest—would require the Legislative Defendants to drop the African American voting-age population in CD 1 and thereby dismantle the district. It would no longer be a crossover district. Importantly, Plaintiffs are *not* contending that CD 1 should be a majority-minority district. To the contrary, they demand that African American voting-age population be *removed* from the district.

31. The need to drop CD1’s BVAP results from the correlation between race and political affiliation in North Carolina. Removing Democratic residents of CD1 will necessarily result in dropping its BVAP. Although polarized voting has been alleged to be in decline in some portions of North Carolina, CD1 is in the northeastern part of the state, populated by white voters who lean Republican. Given these dynamics, Congressman Butterfield’s testimony about the appropriate level of BVAP in CD1 is credible and likely to be borne out by the evidence in this case.

32. Legislative Defendants' Voting Rights Act concerns are not merely speculative. Instead, Legislative Defendants' concerns are bolstered by two recent cases: *Common Cause v. Rucho*, 139 S. Ct. 2484 (2019) ("*Rucho*") and *Common Cause v. Lewis*, 2019 WL 4569584 (N.C.Super.) (Sept. 3, 2019) ("*Lewis*").

33. In *Lewis*, a three-judge panel of the Wake County Superior Court entered a judgment finding that certain North Carolina legislative districts violated the state-law theory Plaintiffs posit in their Complaint in this case. In concluding that the challenged districts were supposedly partisan "outliers", the court credited and relied upon the expert analysis by Dr. Jowei Chen. 2019 WL 4569584, at *17-*28. Dr. Chen created an algorithm that he used to draw thousands of simulated legislative districts. Dr. Chen's algorithm relied only on neutral, non-partisan criteria to draw the simulated districts. Dr. Chen's simulated districts therefore embodied the principles Plaintiffs contend apply under the North Carolina Constitution. *See id.* at *18-*28.

34. In *Common Cause v. Rucho*, a challenge to the very same congressional redistricting plan at issue in this case, the United States Supreme Court recently decided that partisan gerrymandering claims present a nonjusticiable issue for federal courts. 139 S. Ct. at 2506-07. In the district court proceedings, however, Dr. Chen used his algorithm method to draw thousands of simulated congressional plans for North Carolina. As in *Lewis*, Dr. Chen's algorithm relied only on neutral, non-partisan criteria to draw the simulated districts. As in *Lewis*, Dr. Chen's simulated districts therefore embody the principles Plaintiffs contend apply under the North Carolina Constitution. 318 F.Supp.3d 777, 874-877 (2018).

35. On September 30, 2019, Plaintiffs in the instant case filed a motion for preliminary injunction. In support of that motion, Plaintiffs attached a new expert report from Dr. Chen analyzing the 2016 Congressional Plan. A copy of Dr. Chen's report is attached as **Exhibit 3**. In his report, Dr. Chen states that his analysis in the instant case is based upon the same simulated districts he created in *Rucho*. Exhibit 3, at ¶¶ 7-8.

36. In *Lewis*, the Superior Court's Decree ordered the General Assembly to redraw the challenged legislative districts according to Plaintiffs' state-law theory. To satisfy this state-court command, the General Assembly adopted maps simulated by Dr. Chen, with minor modifications. As a result, the General Assembly incorporated the political and racial outcomes that Dr. Chen's simulated maps achieved. It had no choice but to do so in some way, given the state-court order to redraw.¹

37. An order from the state court to apply neutral redistricting criteria for the purpose of complying with Plaintiffs' desire to replace "Democratic VTDs" with more "moderate and Republican VTDs" will destroy CD 1's status as a crossover district. This is not speculative as evidence from Dr. Chen in *Rucho* demonstrates. As explained above, Dr. Chen created thousands of non-partisan congressional maps using his computer

¹ In that instance Plaintiffs presented—only at the remedial stage—evidence that they claimed undercut any showing of polarized voting. That evidence, however, is not relevant here. CD1 comprises the following counties: Durham (partial), Granville, Vance, Warren, Halifax, Northampton, Hertford, Gates, Bertie, Washington, Martin, Edgecombe, Pitt (partial), and Wilson (partial). Out of all these counties, the Plaintiffs' VRA filing in *Lewis* covered only Pitt and therefore lacks probative value for assessing voting patterns in CD1. Other evidence in the *Lewis* case also did not address all these counties or the most probative elections. No evidence exists, to the General Assembly's knowledge, undercutting Congressman Butterfield's first-hand knowledge and sworn testimony that a 45% BVAP is necessary to create an equal-opportunity district.

algorithm. According to evidence admitted at the *Rucho* trial, *not a single one* of Dr. Chen's thousands of maps drew a district in the area of CD 1 with a BVAP at or above 45% or even 44%. Most of the districts were at a BVAP meaningfully below the BVAP level Congressman Butterfield testified would be necessary to preserve the minority ability to elect in CD1. See DX5038, attached as **Exhibit 4**. Moreover, as demonstrated by DX5038, only 262 of Dr. Chen's thousands of maps drew any district with a BVAP of at least 40%. Many of the maps drew districts in the area of CD 1 that were below 40%. Therefore, it is highly likely that the relief requested by the Plaintiffs in this case will require the dismantling of CD 1 as a crossover district.

38. The General Assembly's contention that CD 1 preserves African American voting strength to ensure equality in voting is a defense to Plaintiffs' state-law challenge. To satisfy Plaintiffs' state law theory, a map with their criteria and the resulting political and racial impact must be adopted. There appears to be no way to satisfy Plaintiffs' state-law theory and create a district in northeast North Carolina in which black residents can maintain an equal opportunity to elect their preferred candidate of choice. Section 1443(2) creates a federal forum for this defense. Under Section 1443(2), the defense need not be proved as a factual matter at this time. The defense is colorable and supports removal.

B. The Equal Protection Clause

39. A conflict also arises between Plaintiffs' asserted state-law theories and Legislative Defendants' obligations under federal law because affording Plaintiffs the relief they request would require intentionally dismantling this crossover district.

40. But intentionally dismantling this district would violate the equal-protection prohibition on intentionally “cracking” communities composed of racial minorities. This too is a direct conflict between the alleged state-law duties Plaintiffs assert (wrongly, in the General Assembly’s view) and the dictates of a federal law guaranteeing equality. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (“And if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments.”); *see also Reno v. Bossier Parish School Bd.*, 520 U. S. 471, 481–482 (1997).

41. The racial composition of CD1 is something the General Assembly, or a court, cannot help but know, and it would be readily apparent that, in drawing it as Plaintiffs demand, the General Assembly would be cracking the black community. The General Assembly would then have a choice: (1) draw it at 45% BVAP or above in violation of Plaintiffs’ state-law theory, (2) use racial data with a predominantly racial purpose to achieve a “non-packed” district at 45% BVAP by intentionally excluding white Democratic voters, or (3) draw it at 45% BVAP without that predominantly racial purpose and violate Plaintiffs’ state-law theory. Options (1) and (2) violate the Equal Protection Clause; option (3) violates Plaintiffs’ state-law theory. That is a “conflict.”

42. Under Section 1443(2), these defenses need not be proved as a factual matter at this time. The defenses are colorable and support removal.²

² The General Assembly acknowledges that a judge in this district earlier this year remanded a removal from Legislative Defendants in the *Lewis* case that was also based upon 28 U.S.C. § 1443(2). *Common Cause v. Lewis*, 358 F.Supp.3d 505 (2019). Legislative Defendants respectfully disagreed with that decision and exercised their right to appeal it. *Common Cause v.*

43. Consistent with 28 U.S.C. § 1446(d), the Legislative Defendants are concurrently filing a Notice of Filing of Notice of Removal with the Clerk of Court for the General Court of Justice, Superior Court Division, Wake County, North Carolina, a copy of which is attached hereto as **Exhibit 5**. Consistent with Local Rule 5.3 a Civil Cover Sheet is attached hereto as **Exhibit 6**, and a Supplemental Removal Cover Sheet, is attached hereto as **Exhibit 7**.

44. Venue is proper in this District under 28 U.S.C. § 1441(a) because this District embraces the place where the removed state court action is pending.

45. Consent from the other Defendants in this action who have not (at least as of yet) sought removal is unnecessary because consent is only required when “a civil action is removed *solely* under section 1441(a).” 28 U.S.C. § 1446(b)(2)(A). That is not the case here.

WHEREFORE, the Legislative Defendants give notice that this action has been removed to the United States District Court for the Eastern District of North Carolina.

Respectfully submitted, this the 14th day of October, 2019.

Lewis, No. 19-1091 (4th Cir. Jan. 24, 2019). As of the date of the instant removal petition, the Fourth Circuit has not yet ruled on the merits of the appeal. Legislative Defendants believe that the district court decision was erroneous for the reasons stated in their appellate briefing and that the instant removal is therefore warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing the existing district court opinion, or establishing new law.

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CERTIFICATE OF SERVICE

It is hereby certified that on this date the foregoing **Notice of Removal** was duly served upon all other parties to this matter by mailing a copy thereof, via Federal Express addressed to:

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DATED this the 14th day of October, 2019.

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Exhibit 1

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Docket No. _____

REBECCA HARPER; AMY CLARE
OSEROFF; DONALD RUMPH; JOHN
BALLA; RICHARD R. CREWS; LILY
NICOLE QUICK; GETTYS COHEN JR.;
SHAWN RUSH; JACKSON THOMAS
DUNN, JR.; MARK S. PETERS; JOSEPH
THOMAS GATES; KATHLEEN BARNES;
VIRGINIA WALTERS BRIEN; DAVID
DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIR OF THE HOUSE STANDING
COMMITTEE ON REDISTRICTING;
RALPH HISE, IN HIS OFFICIAL
CAPACITY AS CO-CHAIR OF THE
SENATE STANDING COMMITTEE ON
REDISTRICTING; WARREN DANIEL, IN
HIS OFFICIAL CAPACITY AS CO-CHAIR
OF THE SENATE STANDING
COMMITTEE ON REDISTRICTING; PAUL
NEWTON, IN HIS OFFICIAL CAPACITY
AS CO-CHAIR OF THE SENATE
STANDING COMMITTEE ON
REDISTRICTING; SPEAKER OF THE
NORTH CAROLINA HOUSE OF
REPRESENTATIVES TIMOTHY K.
MOORE; PRESIDENT PRO TEMPORE OF
THE NORTH CAROLINA SENATE PHILIP
E. BERGER; THE NORTH CAROLINA
STATE BOARD OF ELECTIONS; DAMON
CIRCOSTA, IN HIS OFFICIAL CAPACITY
AS CHAIRMAN OF THE NORTH
CAROLINA STATE BOARD OF

VERIFIED COMPLAINT

(Three-Judge Court Pursuant to
N.C. Gen. Stat § 1-267.1)

FILED
2019 SEP 27 A 9:53
WAKE CO. S.C.
BY

ELECTIONS; STELLA ANDERSON, IN
HER OFFICIAL CAPACITY AS
SECRETARY OF THE NORTH CAROLINA
STATE BOARD OF ELECTIONS;
KENNETH RAYMOND, IN HIS OFFICIAL
CAPACITY AS MEMBER OF THE NORTH
CAROLINA STATE BOARD OF
ELECTIONS; JEFF CARMON, IN HIS
OFFICIAL CAPACITY AS MEMBER OF
THE NORTH CAROLINA STATE BOARD
OF ELECTIONS; DAVID C. BLACK, IN HIS
OFFICIAL CAPACITY AS MEMBER OF
THE NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. “[T]he constitutional rights of North Carolina citizens are infringed when the General Assembly . . . draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Partisan gerrymandering “strikes at the heart of the Free Elections Clause” of North Carolina’s Constitution, a provision with no federal analogue that “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People.” *Id.* at 9, 305. Partisan gerrymandering also violates the North Carolina Constitution’s guarantees of equal protection and free expression, both of which provide broader protections for voting rights than their federal counterparts. *Id.* at 307-31.

2. This case concerns North Carolina’s 2016 congressional map, which may be the most extreme and brazen partisan gerrymander in American history. There is no dispute that the 2016 congressional map reflects an extreme and intentional effort to maximize Republican advantage. Legislative Defendants proudly admitted it at the time. They adopted “Partisan Advantage” as an official criterion, directing that the districts be constructed to “maintain the current partisan makeup of North Carolina’s congressional delegation,” namely “10 Republicans and 3 Democrats.” Legislative Defendants admitted that they instructed their mapmaker, Dr. Thomas Hofeller, to use partisan voting histories to rig the district lines to entrench a 10-3 Republican advantage. Defendant Representative David Lewis asserted that the map was drawn in this manner because he believes “electing Republicans is better than electing Democrats,” and the only reason Legislative Defendants sought a 10-3 Republican advantage was because they “did not believe it would be possible to draw a map with 11 Republicans and 2 Democrats.”

3. With Dr. Hofeller’s help, Legislative Defendants succeeded in rigging North Carolina’s congressional elections. Republicans have won 10 of 13 seats in both elections under the 2016 Plan, including in the blue wave of 2018 when Democratic congressional candidates received a majority of the statewide vote after adjusting for an uncontested race. The 2016 map is impervious to “the will of the People.” *Common Cause*, 18-CVS-014001, slip. op. at 9, 306.

4. In 2019, in a case involving the same congressional map at issue here, the U.S. Supreme Court held that partisan gerrymandering claims are not justiciable under the *federal* constitution. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). But in so holding, the Court made clear that the solution to partisan gerrymandering lies with the states, because “[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Id.* at 2507. The courts of this State have now held that the North Carolina Constitution provides precisely such standards and guidance. Just weeks ago, a three-judge panel of this Court invalidated North Carolina’s state legislative maps as unlawful partisan gerrymanders in violation of North Carolina’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *See Common Cause*, 18-CVS-014001, slip. op. at 298-331.

5. As this Court explained in *Common Cause v. Lewis*, North Carolina’s 2016 congressional map “arose in remarkably similar circumstances” as the state legislative maps that the Court struck down and ordered redrawn. *Id.* at 298. The 2016 congressional map should now meet the same fate as the unconstitutional and invalidated state legislative maps. The facts of this case are undisputed, and the law of North Carolina is now settled. This Court should invalidate the gerrymandered 2016 congressional map immediately and order a new, fair map for use in the 2020 elections.

PARTIES

A. Plaintiffs

6. Plaintiff Amy Clare Oseroff is a teacher residing in Greenville, North Carolina, within Congressional District 1. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly packed the most heavily Democratic areas in Pitt County and Wilson County into District 1 to create an overwhelmingly Democratic district, ensuring that nearby Districts 2 and 3 would favor Republicans. In 2018, the Democratic candidate won District 1 with almost 70% of the vote.

7. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina, within Congressional District 2. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly carefully avoided the most Democratic areas of Wake County and Wilson County and cracked the Democratic voters of Johnston County to create a district that favors Republicans. In 2018, the Republican candidate won District 2 with nearly 53% of the vote.

8. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina, within Congressional District 3. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 3 is a Republican district because the General Assembly packed the most Democratic voters from Pitt County into the adjoining District 1. In 2018, the Republican candidate ran unopposed.

9. Plaintiff John Balla is a digital marketing strategist residing in Raleigh, North Carolina, within District 4. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 4 is a packed Democratic

district that uses a strip of southern Durham County to connect Wake County's most Democratic areas with the heavily Democratic areas in Orange County. In 2018, the Democratic candidate won District 4 with over 75% of the vote.

10. Plaintiff Richard R. Crews is a retired stock broker residing in Newland, North Carolina, within Congressional District 5. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 5 cracks Democratic voters in Forsyth County, connecting them with more Republican communities in Winston-Salem rather than grouping them with neighboring Guilford County. In 2018, the Republican candidate won District 5 with over 57% of the vote.

11. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North Carolina, within Congressional District 6. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked District 6 by splitting Greensboro and Guilford County to ensure that District 6 would favor Republicans. In 2018, the Republican candidate won District 6 with just over 56% of the vote.

12. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina, within Congressional District 7. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked Democratic voters in District 7, in part by splitting Johnston County's Democratic voters and Bladen County's most Democratic voters. In 2018, the Republican candidate won District 7 with over 56% of the vote.

13. Plaintiff Shawn Rush is part owner of a marketing firm and a Meals on Wheels organizer residing in East Spencer, North Carolina, within Congressional District 8. Mr. Rush is

a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly manipulated District 8 by cracking Fayetteville's Democratic voters between Districts 8 and 9. In 2018, the Republican candidate won with roughly 55% of the vote.

14. Plaintiff Jackson Thomas Dunn, Jr. is a retired attorney and law professor residing in Charlotte, North Carolina, within Congressional District 9. Mr. Dunn is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As with District 8, the General Assembly manipulated District 9 to be as favorable as possible for Republicans, with the Republican candidate winning by two percentage points in the 2019 special election in this district.

15. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina, within Congressional District 10. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives. In drawing the 2016 maps, the General Assembly cracked Asheville's Democratic voters between Districts 10 and 11 to make each district more favorable to Republican candidates. In the 2018 elections, the Republican candidate won District 10 with over 59% of the vote.

16. Plaintiff Joseph Thomas Gates is a former Colonel in the Air Force and a retired information technology project manager residing in Weaverville, North Carolina, within Congressional District 11. Mr. Gates is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

17. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina, within Congressional District 11. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

18. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina, within Congressional District 12. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 12 is a packed Democratic district. In 2018, the Democratic candidate won District 12 with over 73% of the vote.

19. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina, within Congressional District 13. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly ensured that Republicans were favored in District 13 by cracking the Guilford County Democratic voters and grouping them with overwhelmingly Republican voters in nearby counties. In 2018, the Republican candidate won District 13 with over 53% of the vote.

B. Defendants

20. Defendant David R. Lewis is a member of the North Carolina House of Representatives and currently serves as the Senior Chair of the House Standing Committee on Redistricting. In 2016, Representative Lewis served as Chairman of the North Carolina House

Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting. Defendant Lewis is sued in his official capacity only.

21. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Hise is sued in his official capacity only.

22. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Daniel is sued in his official capacity only.

23. Defendant Paul Newton is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Newton is sued in his official capacity only.

24. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

25. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

26. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

27. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

28. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

29. Defendant Ken Raymond is a member of the North Carolina State Board of Elections. Mr. Raymond is sued in his official capacity only.

30. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

31. Defendant David C. Black is a member of the North Carolina State Board of Elections. Mr. Black is sued in his official capacity only.

JURISDICTION AND VENUE

32. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

33. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

34. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because this action challenges the validity of redistricting plans enacted by the General Assembly.

FACTUAL ALLEGATIONS

A. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Elections

35. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

36. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

37. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

38. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

B. Republican Mapmakers Create the 2011 Plan from Party Headquarters With the Intent to Advantage Republicans and Disadvantage Democrats

39. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing a congressional redistricting plan. Representative David Lewis, in his capacity as the Senior Chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as Senior Chair of the Senate Redistricting Committee, were responsible for developing the proposed congressional districting plan (the “2011 Plan”).

40. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller, who also served on a REDMAP redistricting team, to draw the 2011 Plan. Dr. Hofeller and his team drew the 2011 Plan at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

41. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plan.

42. Representative Lewis and Senator Rucho, both Republicans, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new plan. Dr. Hofeller later testified that the Committee Chairs instructed him to “create as many districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:8-23 (Jan. 24, 2017). Following these instructions, Dr. Hofeller sought to “minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate.” Hofeller Dep. at 123:1-7. Dr. Hofeller consulted “political voting history” as reflected in “past election results,” which he testified is “the most important information in trying to give one party or the other a partisan advantage in the redistricting process,” because it is “the best predictor of how a particular geographic area is likely to vote” in future elections. Hofeller Dep. at 14:7-15:14, 16:8-12, 132:14-134:13.

43. Dr. Hofeller sought to minimize the opportunities for Democratic voters to elect Democratic representatives by using past election data to concentrate as many Democratic voters as possible into Congressional Districts 1, 4, and 12. *See* Hofeller Dep. at 127:19-128:6. In his testimony, Dr. Hofeller admitted that the resulting 2011 Plan “diminished the opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength.” *See* Hofeller Dep. at 128:17-21.

44. The scheme worked. North Carolina conducted two congressional elections using the 2011 Plan, both of which handed outsized power to Republican congressional candidates. In 2012, Republicans won a *minority* of the statewide congressional vote but won 9 of the 13 seats.

	North Carolina State-Wide Votes in U.S. House Elections		Representatives Elected to U.S. House for North Carolina	
Year	Percentage of <i>Votes</i> Received by Democratic Congressional Candidates	Percentage of <i>Votes</i> Received by Republican Congressional Candidates	Percentage of <i>Seats</i> Won by Democratic Congressional Candidates	Percentage of <i>Seats</i> Won by Republican Congressional Candidates
2012	51%	49%	31% (4 of 13)	69% (9 of 13)
2014	46%	54%	23% (3 of 13)	77% (10 of 13)

C. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

45. On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). The Court ordered the General Assembly to draw a new congressional map.

46. At that time, Republicans held supermajority control of both chambers of the North Carolina General Assembly, and thus had the power to draw the new congressional district lines unilaterally. Representative Lewis and Senator Rucho again took charge of the mapmaking process, and again engaged Dr. Hofeller to draw the remedial congressional plan.

47. On February 9, 2016, in a meeting at Dr. Hofeller's home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis

(“Lewis Dep.”) at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

48. Working on his personal computer, Dr. Hofeller sought to achieve Representative Lewis and Senator Rucho’s partisan objectives through the use of a partisanship formula he created to score every voting tabulation district (VTD) in North Carolina. Dr. Hofeller’s partisanship formula measured the average Democratic and Republican vote share in each VTD across the following seven statewide elections: the 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election.

49. Dr. Hofeller testified that he used the averaged results from these seven elections “to get a pretty good cross section of what the past vote had been,” Hofeller Dep. at 212:16-213:9, and “[t]o give [him] an indication of the two-party partisan characteristics of VTDs,” Deposition of Thomas Hofeller (“Hofeller Dep. II”) at 267:5-6 (Feb. 10, 2017). Dr. Hofeller said that “he had drawn numerous plans in the state of North Carolina over decades,” and that in his experience, “the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it.” Trial Testimony of Thomas Hofeller (“Hofeller Testimony”) at 525:6-10, *Common Cause v. Rucho*, No. 1:13-cv-949, 2018 WL 421334 (M.D.N.C. Sept. 4, 2018), *vacated by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *see* Hofeller Dep. at 149:5-18. “So once a precinct is found to be a strong Democratic precinct,” Dr. Hofeller explained, “it’s probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts.” Hofeller Testimony at 525:14-17.

50. As he drew the district lines in the Maptitude software program, Dr. Hofeller color-coded VTDs on his screen based on his partisanship formula. Dr. Hofeller admitted that he used this partisan color-coding to guide him in assigning VTDs “to one congressional district or another,” using red to show VTDs where voter history data was “the most Democratic” and dark blue for areas that were “the most Republican.” Hofeller Dep. at 102:14-104:22, 106:23-107:1. He further admitted that he similarly used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

51. Dr. Hofeller testified that he conveyed to Representative Lewis his assessment of the partisan performance of districts for which the partisan result wasn’t “really obvious.” Hofeller Dep. II at 290:17-25. Representative Lewis admitted in sworn testimony that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, Representative Lewis assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan, because it was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

52. Both Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished drawing the final 2016 Plan before the House and Senate Redistricting Committees ever met, and that Dr. Hofeller pre-drew the plan with express partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18. Indeed, on February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft plans. Lewis Dep. at 58:13-61:17. Representative Lewis visited Dr. Hofeller’s house several more times over the next few days to review additional draft plans. *Id.* at 73:7-74:7, 77:7-20.

53. The maps Representative Lewis reviewed with Dr. Hofeller over the three days following the February 10 meeting were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the legislature for approval. Lewis Dep. at 77:7-20. Dr. Hofeller and Representative Lewis agreed on a draft plan on either February 12 or 13, 2016. *Id.* That plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

54. On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

55. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 Plan before the hearing took place, the final plan did not reflect any public input.

56. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 Plan.

57. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

Partisan Advantage: The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

58. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “draw the maps to give a partisan advantage to 10 Republicans and 3

Democrats because I do not believe it's possible to draw a map with 11 Republicans and 2 Democrats.” Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

59. Representative Lewis “acknowledge[d] freely that this would be a political gerrymander.” *Id.* at 48:4-5.

60. The Joint Committee adopted “Political Data” as another criterion, which stated:

Political Data: The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

61. Representative Lewis left no doubt as to how this political data would be used, telling the Joint Committee members he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

62. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

63. The Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote. The other criteria were passed on a bipartisan basis. Representative Lewis reassured the Committee that “the criteria that will be available to the mapmaker . . . will only be the criteria that this . . . committee has adopted,” *id.* at 140:8-13, despite knowing that the 2016 Plan was “for the most part finished by the time the criteria were formally adopted by the committee,” Hofeller Dep. at 177:9-14. He later emphasized that “the criteria that this

committee debated and adopted . . . are the criteria that *were used to draw these maps*.” Joint Comm. Session, Feb. 17, 2016, at 43:4-14 (emphasis added).

64. The Joint Committee authorized Representative Lewis and Senator Rucho to engage a consultant to assist the Committee’s Republican leadership in drawing the remedial plan. Representative Lewis and Senator Rucho immediately sent Dr. Hofeller an engagement letter, which he signed the same day. Dr. Hofeller then downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer.

65. Democratic members of the Joint Committee were not allowed to consult with Dr. Hofeller, nor were they allowed access to the state legislative computer on which he downloaded the 2016 Plan.

66. Dr. Hofeller later testified that the 2016 Plan followed the Committee’s Partisan Advantage and Political Data criteria. *See* Hofeller Dep. at 129:14-15.

67. On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Joint Comm. Session, Feb. 17, 2016, at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would “produce an opportunity to elect ten Republicans members of Congress.” *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

68. On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During the debate, Representative Lewis “freely acknowledge[d] that [he] sought partisan advantage.” N.C. House Floor Session, Feb. 19, 2016, at 31:14-17. He defended the

Partisan Advantage criterion by stating: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

69. The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan.

70. In sworn testimony, Senator Rucho confirmed that the 2016 Plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

D. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

71. The 2016 Plan has achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

72. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%).

73. The results are even more striking in 2018. Despite the blue wave that year, and despite the fact the two-party statewide vote was essentially a tie, Democrats were unable to flip a single seat. In fact, adjusting for a district that a Republican won in an uncontested race in 2018, Democrats won a *majority* of the statewide vote in the 2018 congressional elections, but still won only 3 of the state’s 13 congressional seats.

74. The results of the individual races in 2018 reveal how Legislative Defendants achieved this remarkable feat. The following table shows each party’s share of the two-party vote in the districts that the party won in 2018:¹

¹ For District 9, this table uses the results of the September 2019 special elections. To adjust for the uncontested race in District 3, this table assigns the Democratic and Republican candidates the share of the two-party vote received by each candidate in the special election held in District 3 in September 2019.

District	Democratic Vote Share	Republican Vote Share
1	69.9%	
4	75.1%	
12	73.1%	
2		52.8%
3		100.0%
5		57.0%
6		56.5%
7		56.5%
8		55.3%
9		51.0%
10		59.3%
11		60.4%
13		53.1%
Statewide Vote Share Before Adjusting for Uncontested Race	48.9%	51.1%
Statewide Vote Share After Adjusting for Uncontested Race	50.9%	49.1%
Percentage of Seats Won	23.1%	76.9%

75. This table demonstrates the 2016 Plan's packing and cracking in action. In the three seats that Democrats won, the Democratic candidate won enormously lopsided victories, earning between 69.9% and 75.1% of the vote in each of these districts. In contrast, victorious Republican candidates won their seats by much smaller margins, winning between 51.0% and 60.4% of the vote in all contested districts. The 2016 Plan thus guaranteed that Democrats would win three seats by very large margins, while Republicans would win the lion's share of seats by much smaller, although still comfortable, margins.

76. Extensive expert analysis conducted for purposes of the federal partisan gerrymandering challenge to the 2016 Plan confirms that the 2016 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the

University of Michigan, generated 3,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused a three to five seat shift in favor of the Republican Party. Dr. Jonathan Mattingly, the chairman of the Duke Mathematics Department, generated over 24,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Mattingly likewise concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused as many as three seats to shift in favor of the Republican Party.

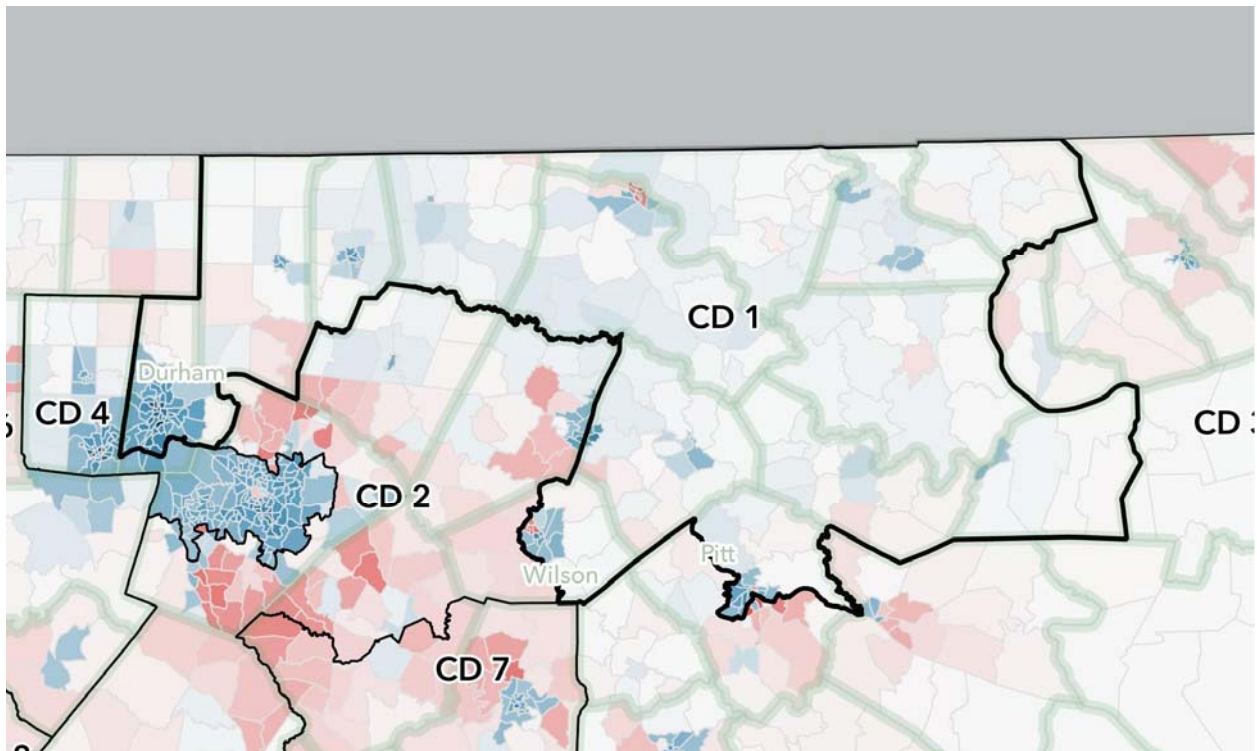
E. The 2016 Plan Packs and Cracks Democratic Voters in Every District

77. The 2016 Plan meticulously packs and cracks Democratic voters in each and every district—without exception. The sections below describe some of the most egregious examples of cracking and packing in each district.

Congressional District 1

78. District 1 is a packed Democratic district that stitches together the heavily Democratic areas of Durham, Wilson, and Pitt Counties with a handful of rural Democratic counties in the northeastern portion of the State.

79. The following image (and others below) shows the district's boundaries and the partisanship of its VTDs using the results of the 2016 North Carolina Attorney General race, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie:



80. The 2016 Plan divides Pitt County for partisan ends, placing Pitt County's most Democratic VTDs in District 1 to the north, while putting the county's more moderate and Republican VTDs in District 3 to the south.

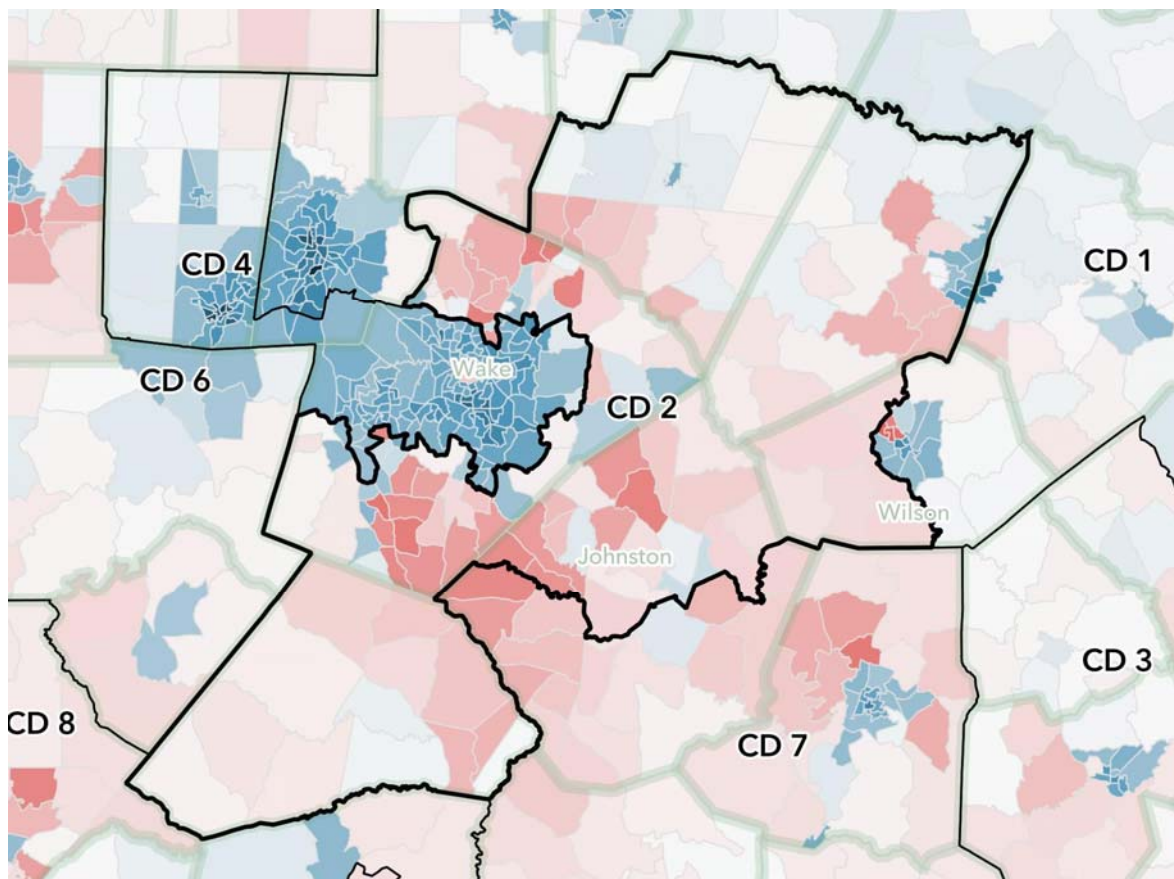
81. The 2016 Plan does the same in Wilson County. In dividing Wilson County, the plan builds a fence between Democratic and Republican voters, nearly straight down the middle

of the county, putting the Democratic VTDs in District 1 to the east and the Republican VTDs in District 2 to the west.

82. The 2016 Plan's packing of Democratic voters in District 1 has produced an overwhelmingly Democratic district. In 2016 and 2018, the Democratic candidate won District 1 with 70.3% and 69.9% of the vote, respectively.

Congressional District 2

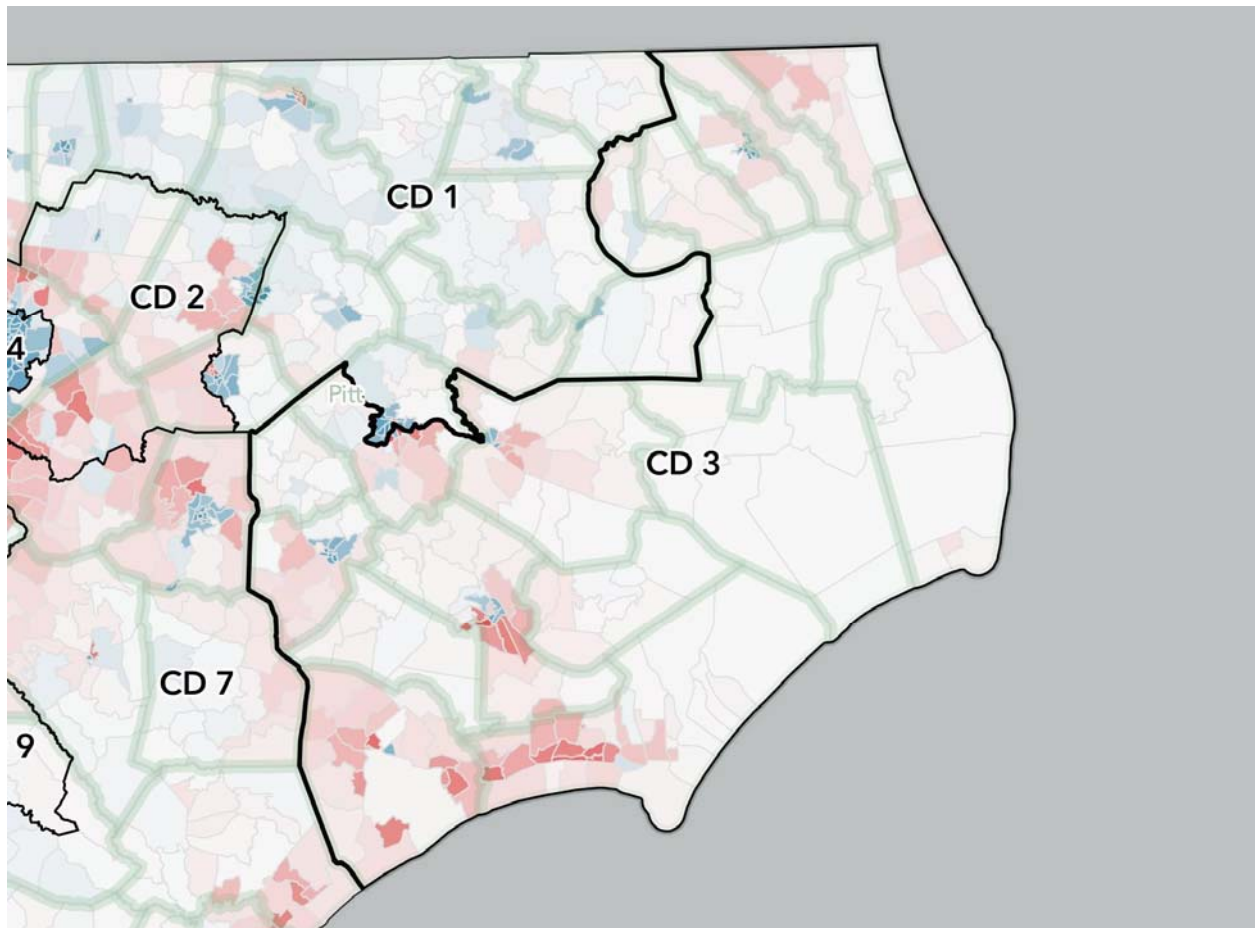
83. District 2 cracks Democratic voters. It carefully avoids the most Democratic areas of Wake County (to the west) and Wilson County (to the east), instead picking up only those counties' moderate and Republican-leaning VTDs. The map further cracks the Democratic voters of Johnston County, splitting them between District 2 to the north and District 7 to the south. The following image shows this extreme cracking of Democratic voters:



84. Legislative Defendants' extreme gerrymandering of this district has ensured that it remains a Republican seat. The Republican candidate won District 2 with 56.7% and 52.8% of the vote in 2016 and 2018, respectively.

Congressional District 3

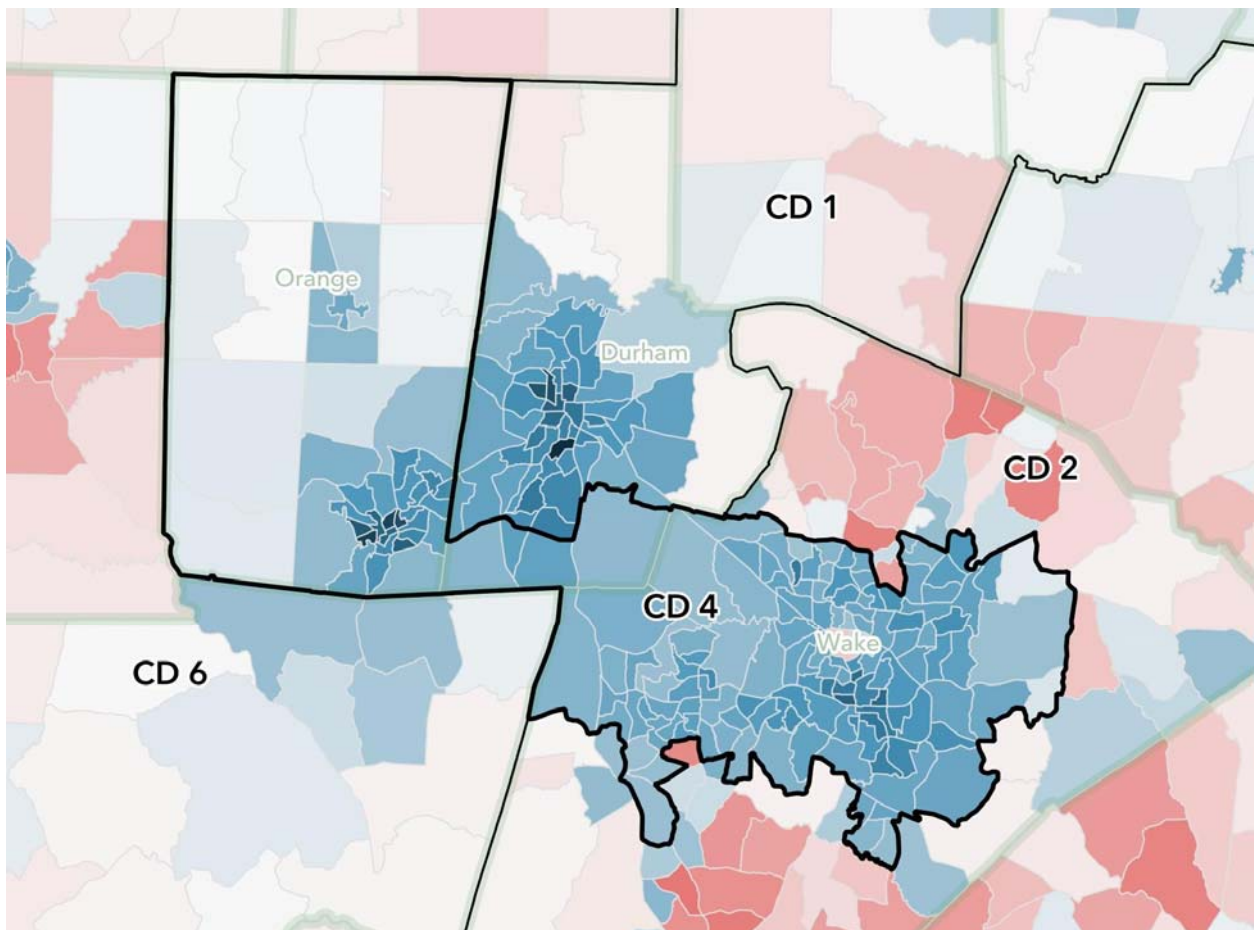
85. Legislative Defendants likewise engineered District 3 to be a safe Republican seat. Whereas District 1 was the recipient of all of Pitt County's most Democratic VTDs, District 3 contains all of Pitt County's most Republican VTDs. The district further avoids a handful of moderate and Democratic counties in eastern North Carolina.



86. District 3 has performed as designed. The Republican candidate won uncontested in 2018, and won 67.2% of the vote in 2016.

Congressional District 4

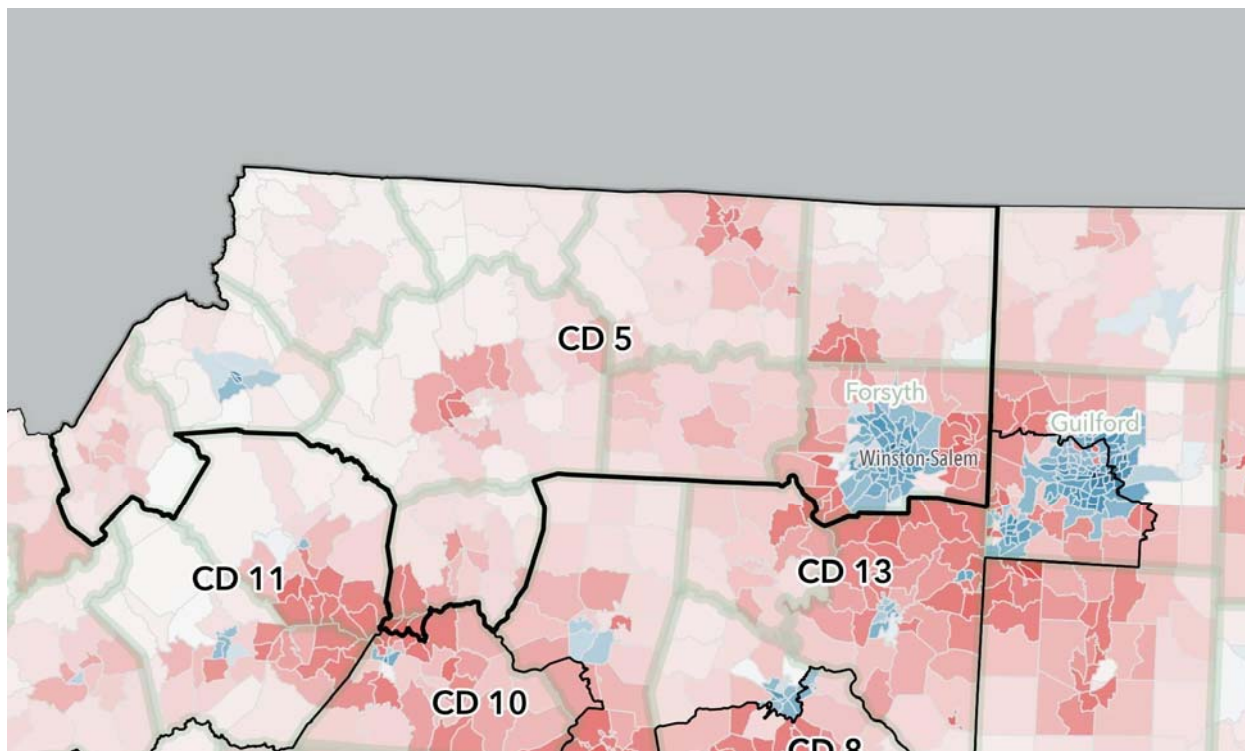
87. District 4 is a clear example of the subordination of traditional districting principles to partisan ends. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 4 to be “predominantly Democratic.” Hofeller Dep. at 192:7-16. To achieve maximum packing of Democratic voters, Legislative Defendants connected Wake County’s most Democratic VTDs with the extremely Democratic VTDs in southern Durham County as well as the entirety of Democratic-leaning Orange County. This allowed Wake County’s more Republican VTDs to be put into District 2 to ensure a Republican seat.



88. The result of this packing is that the Democratic candidate has won District 4 by lopsided margins, winning 68.2% and 75.1% of the vote in 2016 and 2018, respectively.

Congressional District 5

89. Legislative Defendants constructed District 5 to minimize the voting power of Democratic voters in Forsyth County. The 2016 Plan connects Winston-Salem's predominantly Democratic voters with far-flung rural communities to the west.

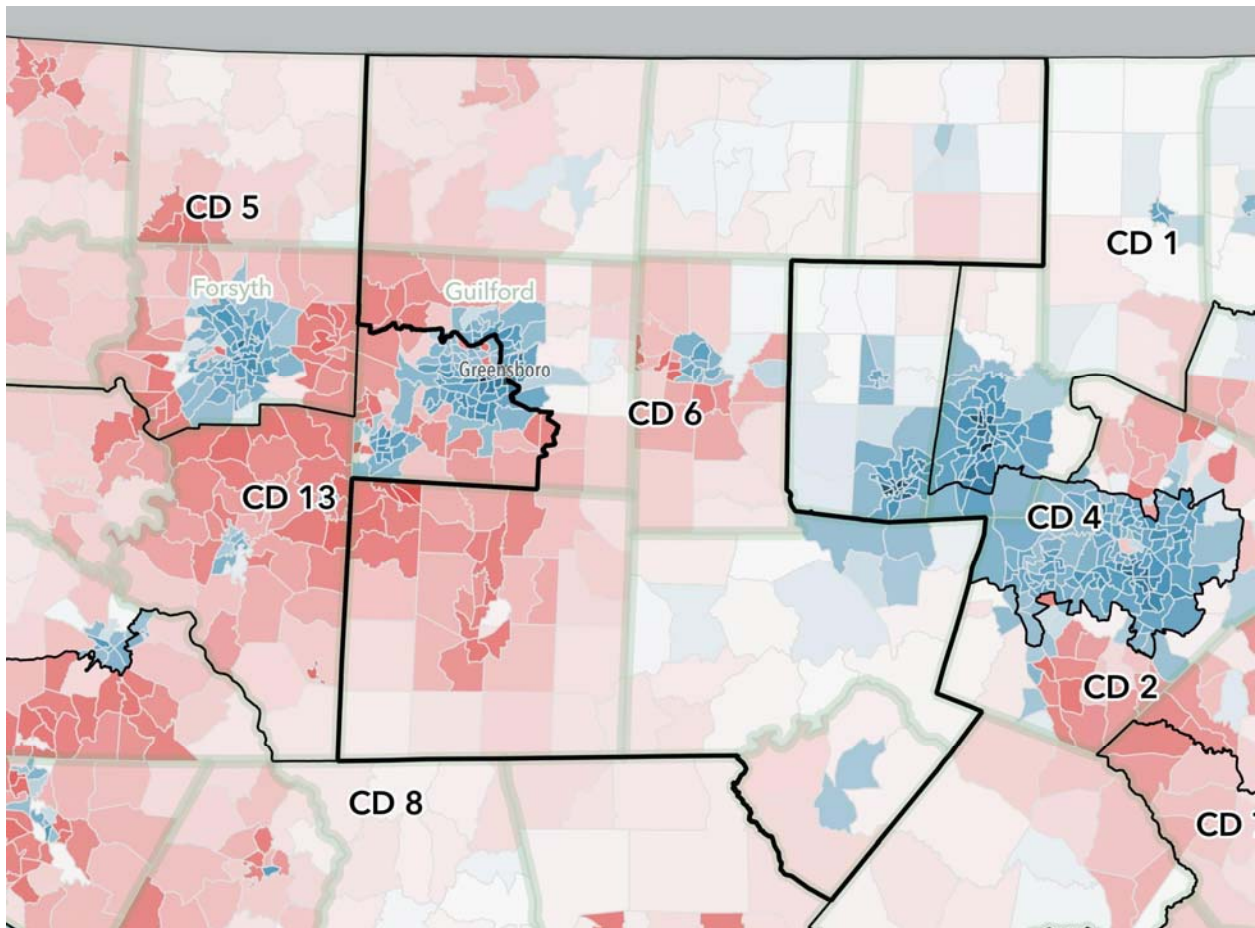


90. Legislative Defendants succeeded in wasting the votes of the Democratic voters of Forsyth County. District 5 elected a Republican by comfortable margins in the 2016 and 2018 elections, with 58.4% and 57.3% of the vote, respectively.

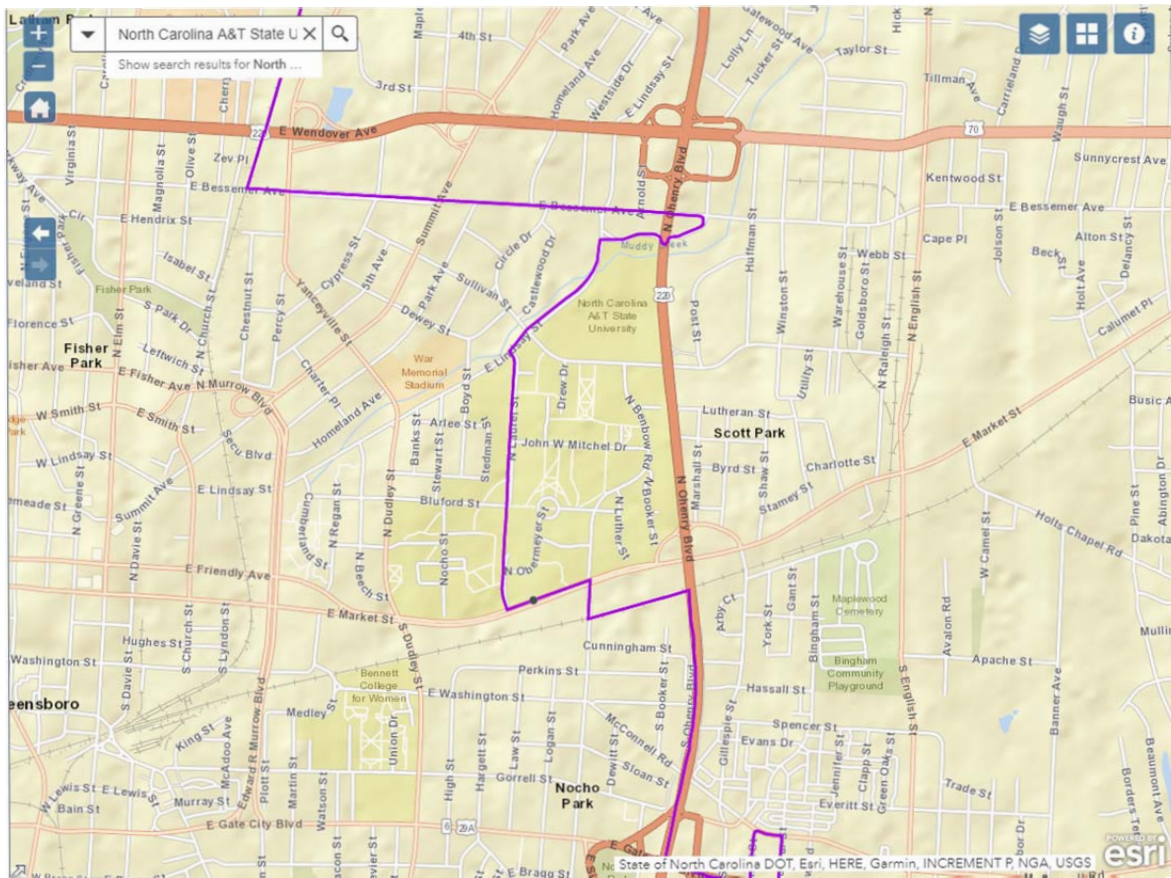
Congressional District 6

91. Greensboro is the third-largest city in North Carolina and home to one of the largest concentrations of Democratic voters in the state. It also fell victim to one of the most egregious examples of cracking in the 2016 Plan.

92. As shown in the image below, the 2016 Plan splits Greensboro—and Guilford County—and subsumes each half within a much larger concentration of Republican voters. The southwestern half of Guilford County is now part of District 13 and the other half belongs to District 6, cracking that causes both districts to be safe Republican seats. As noted previously, the map also separates the Democratic voters in both of these districts from Forsyth County's Democratic voters in District 5.



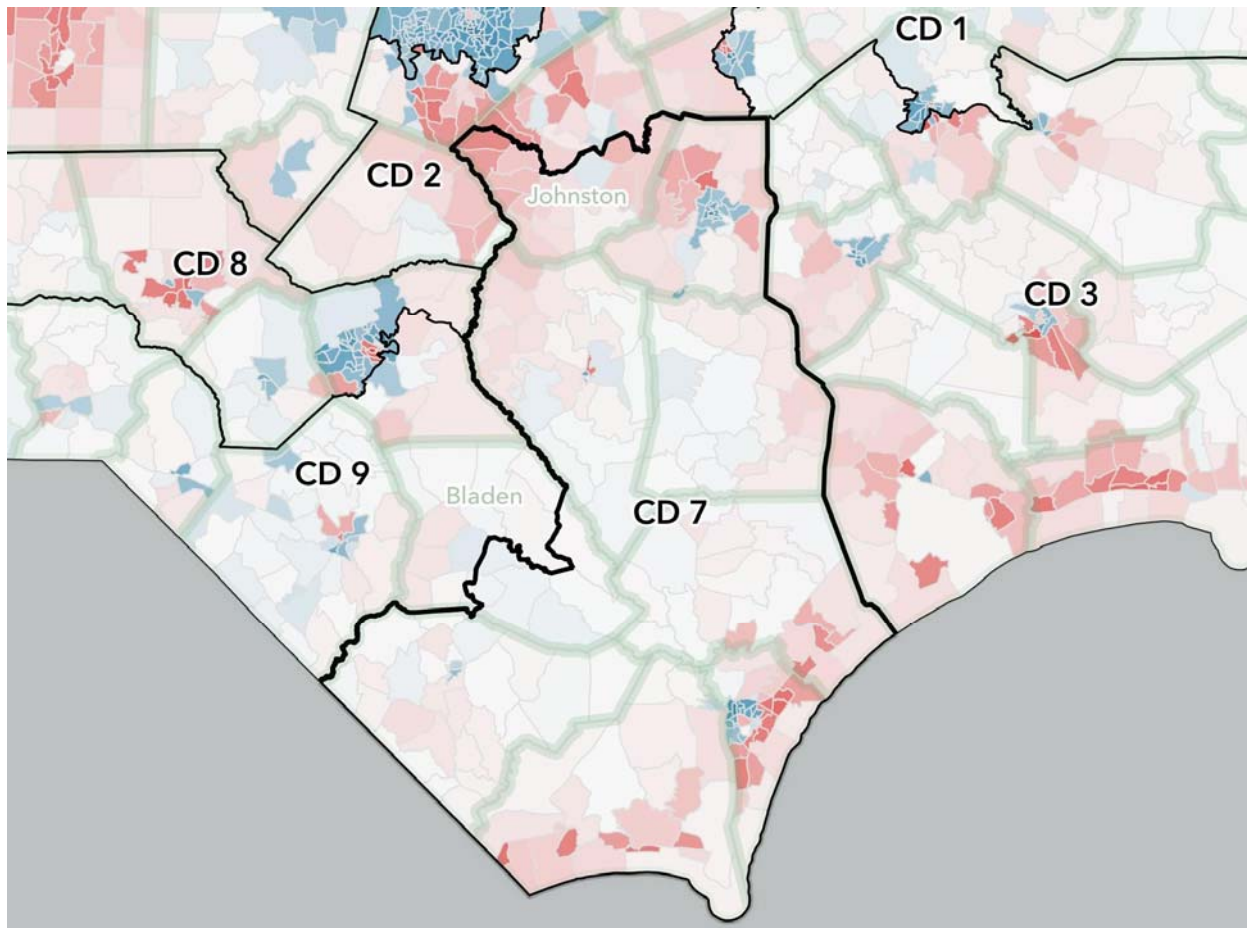
93. In cracking Greensboro's Democratic voters, Legislative Defendants split the campus of North Carolina A&T State University, which is the largest historically black university in the country. The district boundary cuts straight through the campus, placing the west side of campus in District 13 and the east side of campus in District 6, as shown below:



94. As a result of this cracking, the Republican candidate has won District 6 by comfortable margins, with 59.2% and 56.5% of the vote in 2016 and 2018, respectively.

Congressional District 7

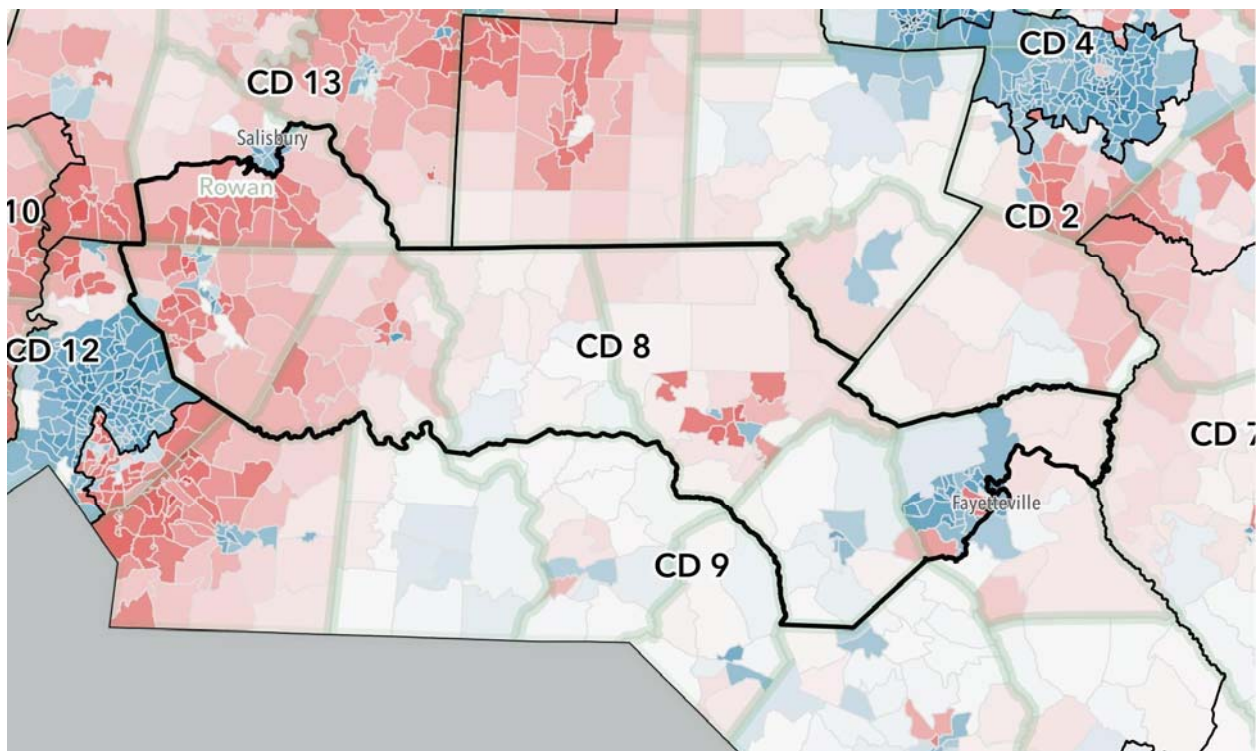
95. The 2016 Plan cracks Democratic voters in District 7. As already explained, at the north end of District 7, the map cracks Johnston County's Democratic voters between Districts 7 and 2. Likewise, on the west side of District 7, the map cracks Democratic voters in Bladen County, splitting the most heavily Democratic VTDs between Districts 7 and 9.



96. As a result of this cracking, District 7 has remained a safe Republican seat. The Republican candidate won District 7 with 60.9% and 56.5% of the vote in 2016 and 2018, respectively.

Congressional District 8

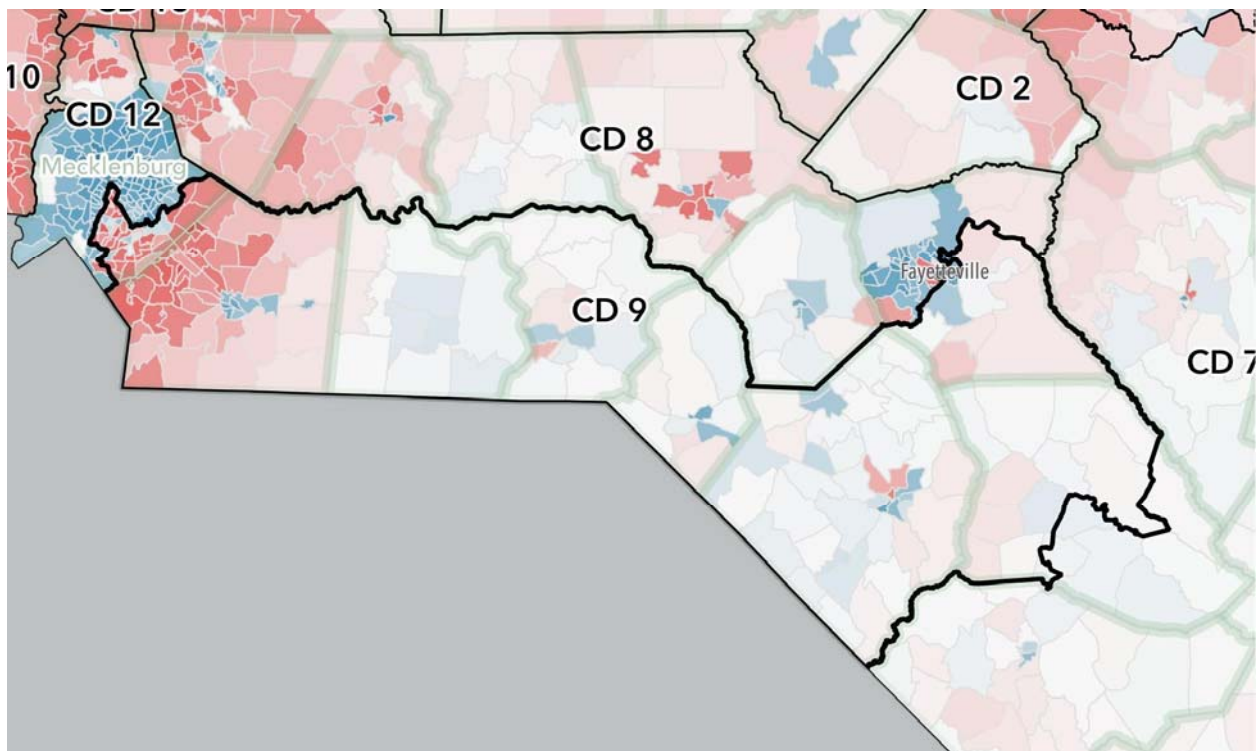
97. Fayetteville is North Carolina's sixth most-populous city and is heavily Democratic. The 2016 Plan cracks Fayetteville's Democratic voters nearly down the middle, placing one group in District 8 and the other in District 9. District 8 then slices to the west, picking up Republican voters in county after county until stopping halfway through Rowan County, right before the district would hit the Democratic voters of Salisbury, who are carefully excluded from District 8 and placed into District 13 instead.



98. As a result of this cracking, District 8 has remained a safe Republican seat. The Republican candidate won District 8 with 58.8% and 55.3% of the vote in 2016 and 2018, respectively.

Congressional District 9

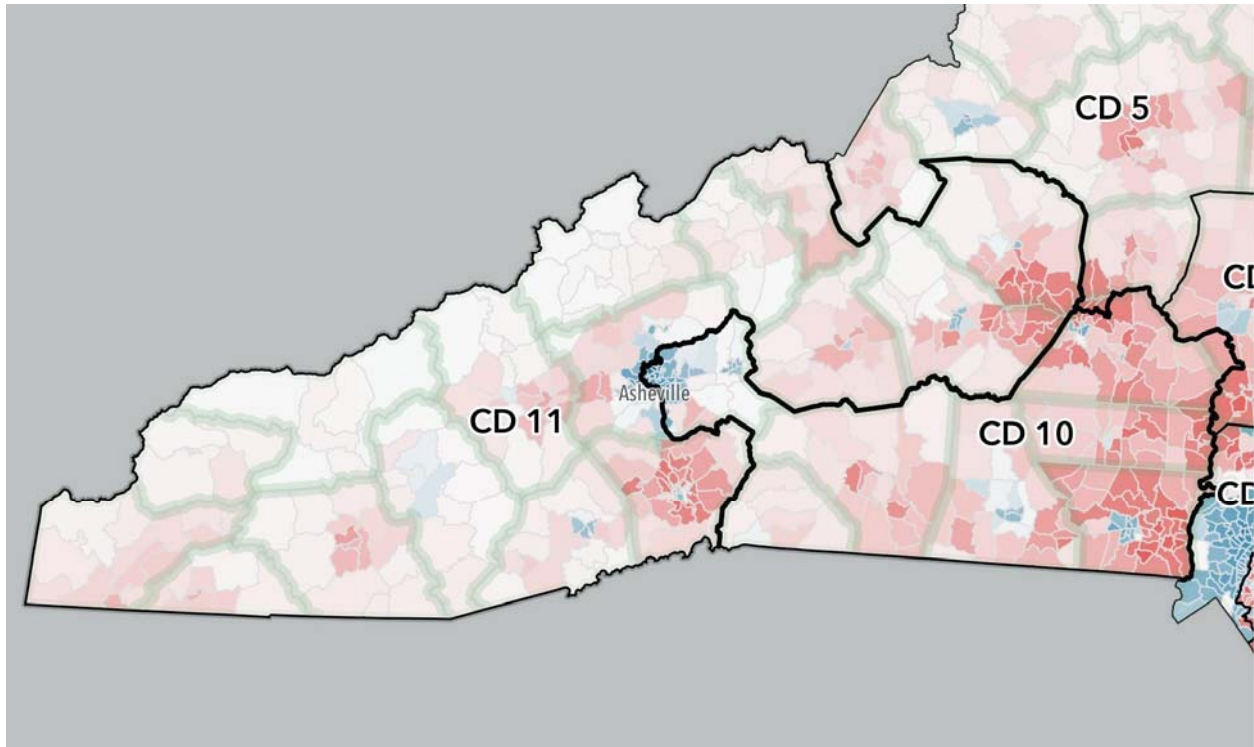
99. District 9 is a near mirror image of District 8. District 9 contains the other half of Fayetteville’s Democratic voters and then, like District 8, stretches west to pick up Republican voters. District 9 reaches into Mecklenburg County and picks up the “pizza slice” in Mecklenburg County that contains the county’s most Republican-leaning VTDs. District 9’s boundaries carefully exclude virtually all of Mecklenburg County’s Democratic VTDs, which instead are packed into District 12.



100. In the elections under the 2016 Plan, District 9 has bent but not broken, remaining a Republican seat. Even the fact that District 9’s 2018 Republican candidate was involved in a high-profile election-fraud scandal that resulted in the invalidation of the 2018 election results for that district could not counterbalance the extreme gerrymander. The Republican candidate won the September 2019 special election in District 9 with 51% of the vote.

Congressional Districts 10 and 11

101. The 2016 Plan egregiously cracks Asheville's Democratic voters between Districts 10 and 11 to create two safe Republican seats. This cracking dilutes the voting power of Asheville's Democratic voters and ensures that they cannot elect a candidate of their choice.



102. The boundary between Districts 10 and 11 splits the campus of UNC Asheville in two, even going so far as to place students living on different sides of the same residential dormitory into different congressional districts, as shown in the image below:²

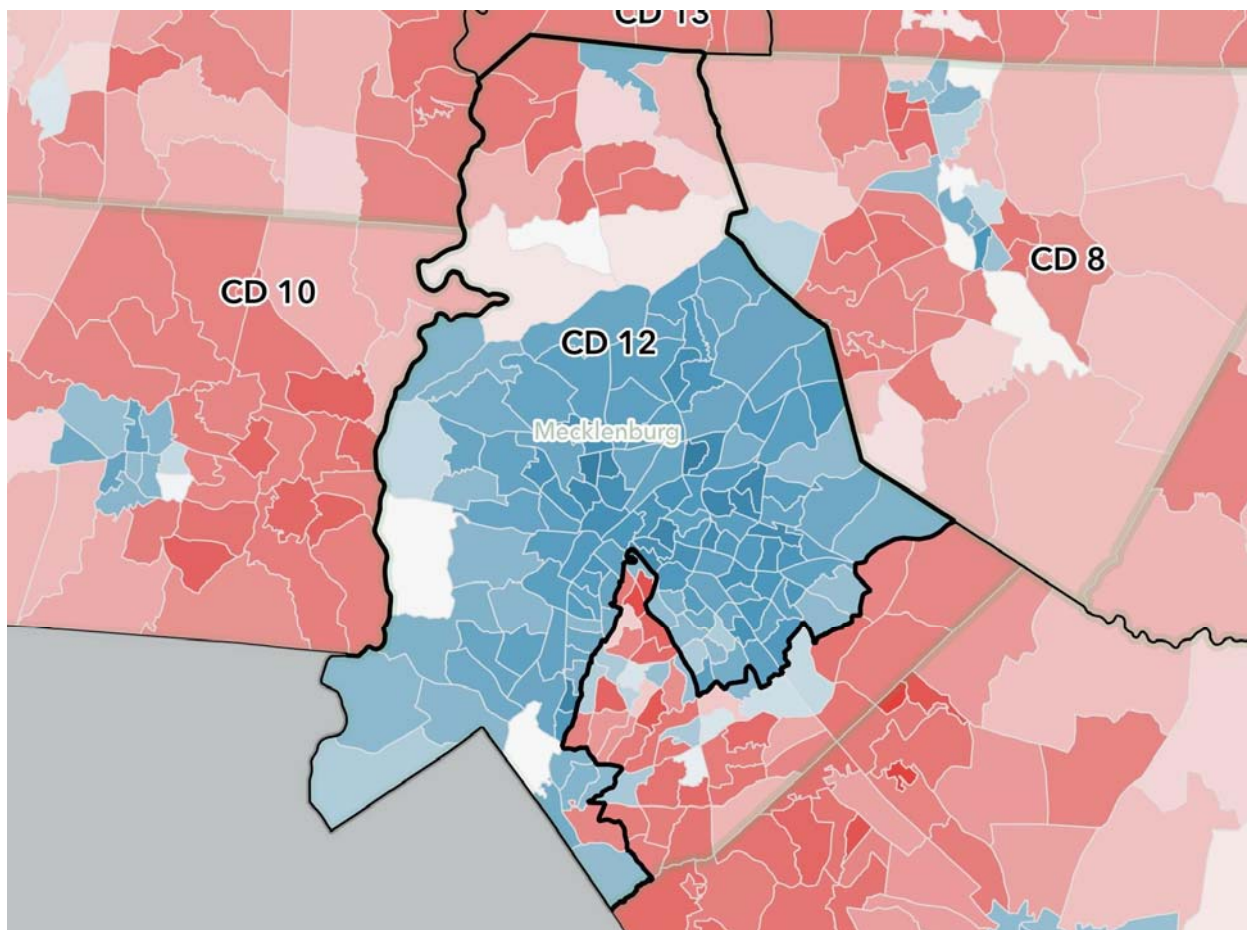
² See *Two UNC Asheville Dorms Are Bisected by Gerrymandered District Boundaries*, Districks (Oct. 26, 2018), <https://blog.districks.com/2018/10/26/two-unc-asheville-dorms-are-bisected-by-gerrymandered-district-lines/>.



103. The cracking of Asheville’s Democratic voters has been successful. The Republican candidates in Districts 10 and 11 won both seats with between 58% and 63% of the vote in the 2016 and 2018 elections.

Congressional District 12

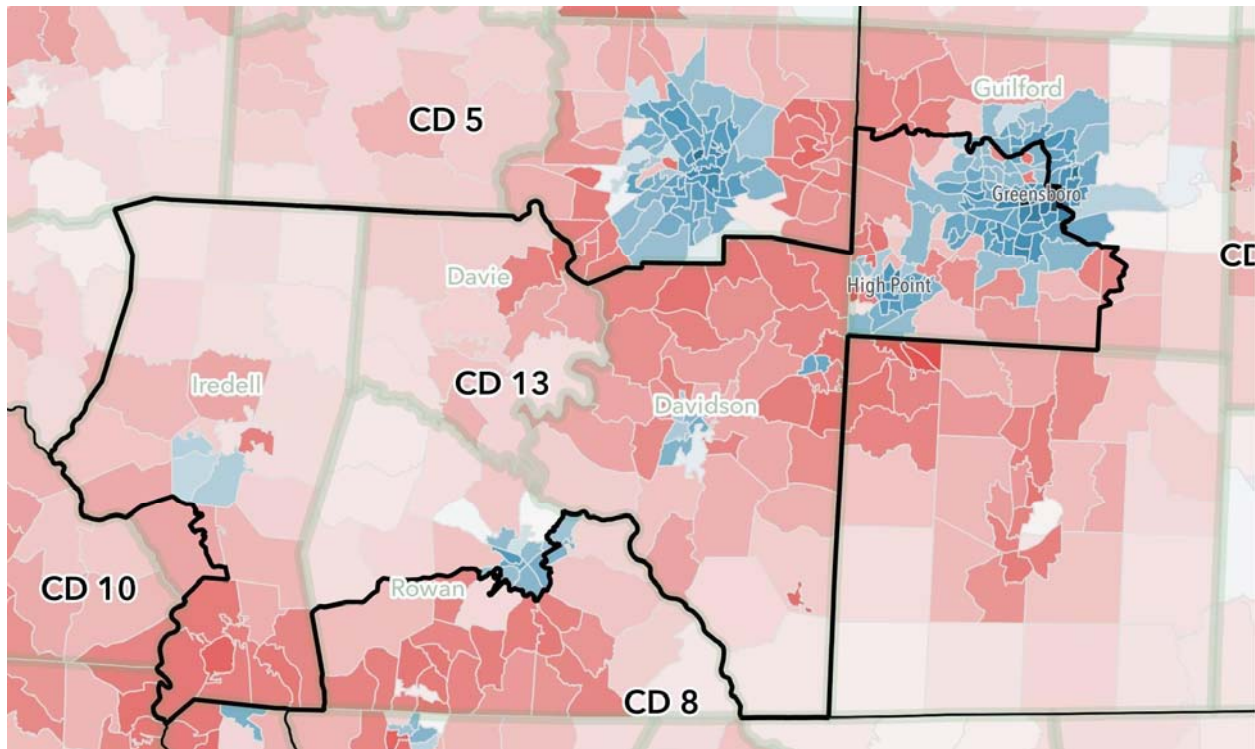
104. District 12 is another packed Democratic district. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 12 to be “predominantly Democratic.” Hofeller Dep. 192:7-16. District 12 packs all of Mecklenburg County’s most Democratic VTDs, carefully excluding the Republican-leaning “pizza slice” in the southern part of Mecklenburg County to ensure that District 12 is an overwhelmingly Democratic district.



105. As a result of this packing, the Democratic candidate won District 12 with 67.0% and 73.1% of the vote in 2016 and 2018, respectively.

Congressional District 13

106. District 13 contains the other cracked half of Guilford County. District 13 groups Guilford County's heavily Democratic voters in and around Greensboro and High Point with overwhelmingly Republican areas in Davidson, Davie, Rowan, and Iredell Counties, ensuring that Guilford County's Democratic voters cannot elect a Democrat.



107. The Republican candidate won District 13 in 2016 and 2018 with 56.1% and 53.1% of the vote, respectively.

F. Legislative Defendants Did Not Draw Any District in the 2016 Congressional Map to Comply with the Voting Rights Act

108. Legislative Defendants and Dr. Hofeller expressly stated both during and after the 2016 redistricting process that they did not create any district in an effort to comply with the Voting Rights Act (VRA). *See* Hofeller Dep. 145:9-146:8, 183:22-184:9.

109. The 2016 Adopted Criteria provided as follows: “Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts.”

110. Legislative Defendants stated over and over again that they were not making any effort to draw districts on account of the VRA because they had concluded that the third *Gingles* factor was not met with respect to any district. The third *Gingles* factor requires the existence of legally sufficient white bloc voting against the candidate of choice of African Americans.

Representative Lewis and Senator Rucho stated that, because they did not believe there was sufficient racially polarized voting, they had concluded that the VRA did not require the creation of any minority opportunity congressional districts. *See* Lewis Dep. at 38:15-19, 51:15-19, 86:2-4, 118:23-119:23, 179:13-21; Deposition of Representative David Lewis (“Lewis Dep. II”) at 242:9-13 (Apr. 28, 2017); Rucho Dep. at 31:2-8. Representative Lewis told the Joint Committee that “the *Harris* opinion found that there was not racially polarized voting in the state, and therefore, the race of the voters should not be considered.” Joint Comm. Session, Feb. 16, 2016, at 27:11-14.

G. The U.S. Supreme Court Holds that Partisan Gerrymandering Claims Are Left to State Courts Applying State Constitutions

111. In August 2016, the North Carolina Democratic Party, Common Cause, and more than a dozen individual North Carolina voters sued Representative Lewis, Senator Rucho, and other state defendants in federal court, asserting that the 2016 Plan was a partisan gerrymander in violation of the *federal* constitution. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019).

112. After a four-day trial, a three-judge federal district court unanimously concluded that the General Assembly “drew and enacted the 2016 Plan with intent to subordinate the interests of non-Republican voters and entrench Republican control of North Carolina’s congressional delegation.” *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 672 (M.D.N.C. 2018). The court further found that “the 2016 Plan achieved the General Assembly’s discriminatory partisan objective.” *Id.* The court therefore held the 2016 Plan violated the Fourteenth Amendment’s Equal Protection Clause and Article I of the U.S. Constitution. The court further held, with one dissenter, that the 2016 Plan also violated the First Amendment. *Id.*

113. The U.S. Supreme Court reversed, holding that partisan gerrymandering claims are not justiciable under the *federal* constitution. *Rucho*, 139 S. Ct. at 2506-07. Nonetheless, the

Court observed that partisan gerrymanders like the 2016 Plan are “incompatible with democratic principles.” *Id.* And, of particular relevance here, the Court recognized that the 2016 Plan is “highly partisan, by any measure.” *Id.* at 2491. While the decision ultimately holds that “partisan gerrymandering claims present political questions beyond the reach of the *federal* courts,” the Court made clear that its conclusion “does not condone excessive partisan gerrymandering[,] [n]or does [its] conclusion condemn complaints about districting to echo into a void.” *Id.* at 2507 (emphasis added).

114. Instead, the U.S. Supreme Court noted that “[t]he States . . . are actively addressing the issue on a number of fronts” under *state* constitutional provisions. *See id.* The Court made clear that “[p]rovisions in state statutes and *state constitutions* can provide standards and guidance for *state courts* to apply.” *Id.* (emphases added).

H. The Superior Court Strikes Down North Carolina’s State Legislative Maps Under the North Carolina Constitution

115. On September 3, 2019, a three-judge panel of this Court unanimously invalidated North Carolina’s state House and state Senate 2017 redistricting plans (“2017 Plans”) under the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 10.

116. The *Common Cause* Court explained that North Carolina’s state legislative maps and the 2016 Congressional Plan “arose in remarkably similar circumstances.” *Id.* at 298. “[B]oth the 2016 Congressional map and the 2017 legislative maps were required after a federal court declared existing maps unconstitutional; both were drawn under the direction of many of the same actors working on behalf of the Republican-controlled General Assembly; both were drawn by Dr. Thomas Hofeller; both were drawn in large part before the General Assembly’s redistricting committee met and approved redistricting criteria; and both, as has been found . . .

with respect to the 2017 legislative maps, were drawn with the intent to maximize partisan advantage and, in fact, achieved their intended partisan effects.” *Id.*

117. The Court found that the 2017 state legislative maps “do not permit voters to freely choose their representative, but rather representatives are choosing voters based upon sophisticated partisan sorting.” *Id.* at 10.

118. The Court determined that the plaintiffs had standing to challenge the state legislative maps, and that their challenges were justiciable under the North Carolina Constitution. *Id.* at 292-98, 331-41. And, on the merits, the Court held that the state legislative maps were partisan gerrymanders that violated the North Carolina Constitution’s Free Elections Clause, Art. I, § 10, Equal Protection Clause, Art. I, § 19, and Free Speech and Assembly Clauses, Art. I, §§ 12, 14. *See Common Cause*, 18-CVS-014001, slip. op. at 7-10.

119. The 2016 Plan violates the North Carolina Constitution in the exact same ways as the 2017 state legislative maps that were recently invalidated in *Common Cause*.

COUNT ONE
Violation of the North Carolina Constitution’s
Free Elections Clause, Art. I, § 10

120. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

121. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

122. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797-98 (1992).

123. This provision of the 1689 English Bill of Rights was a product of the king’s efforts to manipulate parliamentary elections, including by changing the electorate in different

areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

124. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

125. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This . . . is a fundamental right of the citizens enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-306.

126. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Id.* at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

127. The 2016 Plan violates the Free Elections Clause in the same way as the invalidated 2017 state legislative plans. In creating the 2016 Plan, Legislative Defendants “specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2016 Plan “unlawfully seek[s] to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2016 Plan, congressional elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302.

128. Legislative Defendants openly admitted all of this with respect to the 2016 Plan. They expressly stated—and even made an official part of the 2016 Adopted Criteria—that they were endeavoring to maintain “Partisan Advantage” such that, for each election under the new map, Republicans would win 10 seats in North Carolina’s congressional delegation and Democrats would win only 3 seats. The 2016 Adopted Criteria on their face violate the Free Elections Clause.

COUNT TWO
Violation of the North Carolina Constitution's
Equal Protection Clause, Art. I, § 19

129. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

130. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

131. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C 354, 376-81 & n.6, 562 S.E.2d 377, 393-95 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523-24, 681 S.E.2d 759, 763 (2009).

132. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a redistricting plan that “impermissibly distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377-78, 562 S.E.2d at 393.

133. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 307.

134. The 2016 Plan violates North Carolina’s Equal Protection Clause in the same ways as the invalidated 2017 state legislative plans. In drawing the 2016 Plan, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Id.* at 312. The 2016 Plan’s intentional classification of, and discrimination against, Democratic voters is plain. The Republican leaders of the Joint Committee explicitly used “partisan advantage” and “political data” as criteria in drawing the congressional district lines. Specifically, the 2016 Adopted Criteria *required* drawing congressional district lines to give Republicans control of 10 of the 13 congressional seats. *See id.* And Legislative Defendants succeeded in this goal. Republicans maintained control of 10 of the 13 seats following the 2016 and 2018 congressional elections, despite losing the statewide vote in 2018. The Joint Committee’s intent is also laid bare by the packing and cracking of particular Democratic communities.

135. These efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats receive far fewer congressional seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation relative to their share of the statewide vote cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2016 Plan burdens the representational rights of Democratic voters individually and as a group and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the

entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2016 Plan.

COUNT THREE
Violation of North Carolina Constitution’s
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

136. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

137. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

138. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

139. “[T]he North Carolina Constitution’s Free Speech Clause provides broader rights than does federal law.” *Common Cause*, 18-CVS-014001, slip. op. at 318. “In the context of partisan gerrymandering, it is especially important that North Carolina courts give independent force to North Carolina’s constitutional protections.” *Id.* at 319.

140. “Voting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by the North Carolina Constitution’s Freedom of Speech and Freedom of Assembly Clauses.” *Id.* at 320. “Voting provides citizens a direct means of expressing support for a candidate and his views.” *Id.* And “[j]ust as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association.” *Id.* at 321.

141. Irrespective of the U.S. Constitution, the 2016 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. “Legislative Defendants identified certain preferred speakers (Republican voters), while targeting certain disfavored speakers (Plaintiffs and other Democratic voters) for disfavored treatment” because of disagreement with the views they express when they vote. *Id.* (alteration and internal quotation marks omitted). Just as they did in creating the 2017 state legislative plans, “Legislative Defendants analyzed the voting histories of every VTD in North Carolina, identified VTDs that favor Democratic candidates, and then singled out the voters in those VTDs for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Id.* at 323. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* at 323.

142. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article I, § 12 because it “severely burden[s]—if not outright preclude[s]” the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress on issues important to them. *Id.* at 326-27.

143. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article 1, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2016 Plan takes adverse action against Plaintiffs and other Democratic voters, retaliates against their protected

speech and conduct, and would not have taken the adverse action but for Legislative Defendants' retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

144. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2016 Plan be explained or justified by North Carolina's geography or any legitimate redistricting criteria.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and;

a. Declare that the 2016 Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2020 primary and general elections for Congress using the 2016 Plan;

c. Establish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional districting plans comporting with the North Carolina Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina's congressional

districts to intentionally dilute the voting power of citizens or groups of citizens based on their political beliefs, party affiliation, or past votes.

e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina's congressional districts based on their political beliefs, party affiliation, or past votes.

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

PATTERSON HARKAVY LLP



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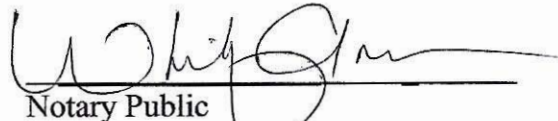
** Applications for Pro Hac Vice
admissions forthcoming*

VERIFICATION

I, AMY CLARE OSEROFF, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.


Amy Clare Oseroff

Sworn and subscribed before me this the 24 day of September, 2019.


Notary Public

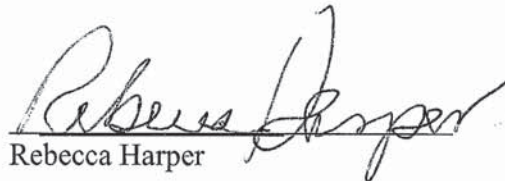
Name: Whitney Anderson

My commission expires: 11/24/23

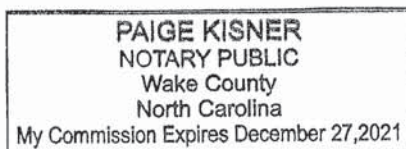


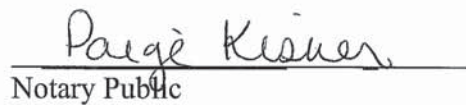
VERIFICATION

I, REBECCA HARPER, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.


Rebecca Harper

Sworn and subscribed before me this the 24 day of September, 2019.




Notary Public

Name: Paige Kisner

My commission expires: 12-27-21

VERIFICATION

I, DONALD ALLAN RUMPH, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

Donald Allan Rumph
Donald Allan Rumph

Sworn and subscribed before me this the 24th day of September, 2019.



Courtney Gilbert
Notary Public

Name: Courtney Gilbert

My commission expires: June 24, 2023

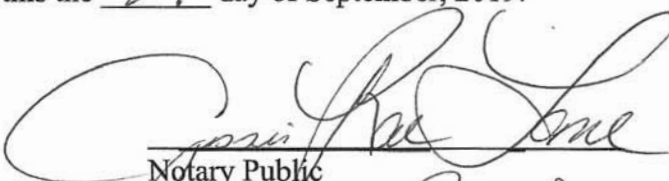
VERIFICATION

I, JOHN BALLA, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.



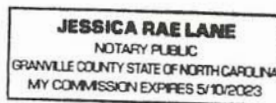
John Balla

Sworn and subscribed before me this the 24 day of September, 2019.



Notary Public
Name: Jessica Rae Lane

My commission expires: May 10, 2023



Acknowledgement

STATE OF NC

COUNTY OF Avery

I certify that Richard R. Crows personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Arnold's Porter Partisan Gary Manning
Name or description of attached document Litigation in NC

I further certify that (select one of the following identification options):

☐ I have personal knowledge of the identity of the principal(s)

☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NC DL 31906427
type of identification

☐ A credible witness, _____, has sworn or affirmed to me the
name of credible witness
identity of the principal, and that he or she is not a named party to the foregoing document, and has no interest in the transaction.

Date: 9/24/19




[Signature]
Notary Public
Mindi T. Jackson
Typed or Printed Notary Name

My commission expires: November 21, 2019

VERIFICATION

I, LILY NICOLE QUICK, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.


Lily Nicole Quick

Sworn and subscribed before me this the 23rd day of September, 2019.


Notary Public

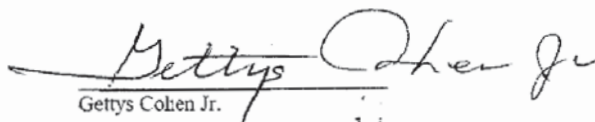
Name: Katredia W. Martin

My commission expires: January 22, 2022

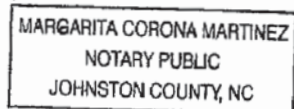


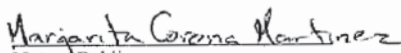
VERIFICATION

I, GETTYS COHEN JR., hereby state that I am a Plaintiff in the above-titled action. that
I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents
therein are true and accurate as they pertain to me.

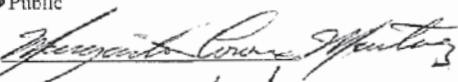

Gettys Cohen Jr.

Sworn and subscribed before me this the 24 day of September, 2019.




Notary Public

Name:



My commission expires:

4/2/2024

VERIFICATION

I, JACKSON THOMAS DUNN, JR., hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

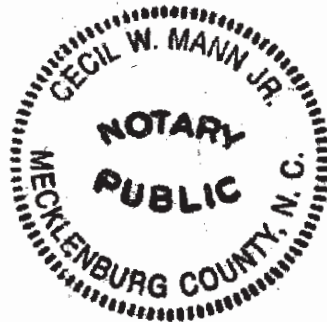

Jackson Thomas Dunn, Jr.

Sworn and subscribed before me this the 24 day of September, 2019.


Notary Public

Name: Cecil W Mann Jr.

My commission expires: March 20, 2022



Plaintiff Mark S. Peters is a retired Physician Assistant residing in Fletcher, North Carolina, within Congressional District 10. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives. In drawing the 2016 maps, the General Assembly cracked Asheville's Democratic voters between Districts 10 and 11 to make each district more favorable to Republican candidates. In the 2018 elections, the Republican candidate won District 10 with over 59% of the vote.



Mark Peters

County: Buncombe
State: North Carolina



Kelly K McDill
my commission expires 5/13/2020
Kelly K McDill
9/24/19

VERIFICATION

I, JOSEPH GATES, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.


Joseph Gates

Sworn and subscribed before me this the 24 day of September, 2019.




Notary Public

Name: Michael A. Hill

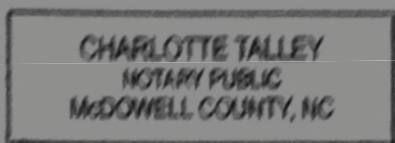
My commission expires: 11/15/2021

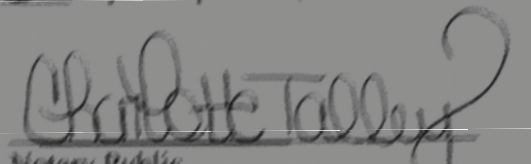
VERIFICATION

I, KATHLEEN BARNES, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing VERIFIED COMPLAINT, and that the contents therein are true and accurate as they pertain to me.


Kathleen Barnes

Sworn and subscribed before me this the 20th day of September, 2019.




Notary Public
Name: Charlotte Talley
My commission expires: 3-3-21

VERIFICATION

I, VIRGINIA BRIEN, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

Virginia Brien
Virginia Brien

Sworn and subscribed before me this the 24th day of September, 2019.

Denise K. Hendricks
Notary Public

Name: Denise K. Hendricks

My commission expires: 6-19-2024



VERIFICATION

I, DAVID DWIGHT BROWN, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.


David Dwight Brown


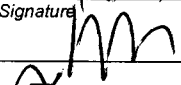
Sworn and subscribed before me this the 24 day of September, 2019.




Notary Public

Name: LINDA HUGHES

My commission expires: APRIL 7, 2021

STATE OF NORTH CAROLINA		File No.	
Wake County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
Name Of Plaintiff Rebecca Harper		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)	
Address 1841 Stonebanks Loop			
City, State, Zip Cary NC 27518			
VERSUS			
Name Of Defendant(s) David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton, Timothy Moore, Philip Berger, NC State Board of Elections, Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III, David C. Black		G.S. 1A-1, Rules 3 and 4 Date Original Summons Issued Date(s) Subsequent Summons(es) Issued	
To Each Of The Defendant(s) Named Below:			
Name And Address Of Defendant 1 Timothy K. Moore 16 West Jones Street Rm 2304 Raleigh NC 27601		Name And Address Of Defendant 2 Philip E. Berger 16 West Jones Street Rm. 2007 Raleigh NC 27601	
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1; text-align: center;">  </div> <div style="flex: 3;"> <p>IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!</p> <p>¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!</p> <p>Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!</p> </div> </div> <p>A Civil Action Has Been Commenced Against You!</p> <p>You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>			
Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff) Burton Craige 100 Europa Dr. Suite 420 Chapel Hill NC 27517		Date Issued 9-27-19 Time 9 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM Signature  <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		Date Of Endorsement Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
<p>NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>			

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
------------------------	---

Date Received	Name Of Sheriff (type or print)
---------------	---------------------------------

Date Of Return	County Of Sheriff
----------------	-------------------

STATE OF NORTH CAROLINA

File No.

Wake County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Rebecca Harper

Address

1841 Stonebanks Loop

City, State, Zip

Cary

NC

27518

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton,
Timothy Moore, Philip Berger, NC State Board of Elections,
Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III,
David C. Black

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

David R. Lewis

16 West Jones Street

Rm. 2301

Raleigh

NC

27601

Name And Address Of Defendant 2

Ralph E. Hise, Jr.

300 N. Salisbury St.

Rm. 300-A

Raleigh

NC

27603



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales.
¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Burton Craige

100 Europa Dr.

Suite 420

Chapel Hill

NC

27517

Date Issued

9-27-19

Time

9

AM

PM

Signature

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM

PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA

File No.

Wake County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Rebecca Harper

Address

1841 Stonebanks Loop

City, State, Zip

Cary NC 27518

VERSUS

Name Of Defendant(s)

David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton,
Timothy Moore, Philip Berger, NC State Board of Elections,
Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III,
David C. Black

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Warren Daniel
300 N. Salisbury Street
Rm 627
Raleigh NC 27603

Name And Address Of Defendant 2

Paul Newton
300 N. Salisbury St.
Rm. 312
Raleigh NC 27603**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!****A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Burton Craige
100 Europa Dr.
Suite 420
Chapel Hill NC 27517

Date Issued

9-27-19

Time

9

☒ AM ☐ PM

Signature

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE			
I certify that this Summons and a copy of the complaint were received and served as follows:			
DEFENDANT 1			
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant	
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div> <p style="font-size: small; margin-top: 5px;">Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</p>			
<input type="checkbox"/> Other manner of service (specify)			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
DEFENDANT 2			
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant	
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div> <p style="font-size: small; margin-top: 5px;">Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</p>			
<input type="checkbox"/> Other manner of service (specify)			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return	
Date Received		Name Of Sheriff (type or print)	
Date Of Return		County Of Sheriff	

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19 CVS 12667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIR OF THE HOUSE STANDING
COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

AFFIDAVIT OF SERVICE

The Affiant, Kimberly Stein, does hereby swear and depose the following:

1. I am a legal assistant for Patterson Harkavy LLP, attorneys for the Plaintiffs in the above-captioned action.
2. Copies of the Summons and Complaint were deposited with United Parcel Service (UPS) in a post-paid envelope for mailing by Second Day Air, to each of the defendants.
3. Copies of the Summons and Complaint were sent by UPS to defendant Philip E. Berger addressed as follows:

Philip E. Berger
16 West Jones St.
Rm. 2007
Raleigh, NC 27601

4. They were in fact received by the addressee on September 30, 2019. Attached is the genuine tracking information.
5. Copies of the Summons and Complaint were sent by UPS to the defendant Warren Daniel, addressed as follows:

Warren Daniel
300 N. Salisbury St.
Rm. 627
Raleigh, NC 27603

6. They were in fact received by the addressee on September 30, 2018. Attached is the genuine tracking information.

7. Copies of the Summons and Complaint were sent by UPS to defendant Ralph E. Hise, Jr. addressed as follows:

Ralph E. Hise, Jr.
300 N. Salisbury St.
Rm. 300-A
Raleigh, NC 27603

8. They were in fact received by the addressee on September 30, 2019. Attached is the genuine tracking information.
9. Copies of the Summons and Complaint were sent by UPS to defendant David R. Lewis addressed as follows:

David R. Lewis
16 West Jones St.
Rm. 2301
Raleigh, NC 27601

10. They were in fact received by the addressee on September 30, 2019. Attached is the genuine tracking information.
11. Copies of the Summons and Complaint were sent by UPS to defendant Timothy K. Moore addressed as follows:

Timothy K. Moore
16 West Jones St.
Rm. 2304
Raleigh, NC 27601

12. They were in fact received by the addressee on September 30, 2019. Attached is the genuine tracking information.
13. Copies of the Summons and Complaint were sent by UPS to defendant Paul Newton addressed as follows:

Paul Newton
300 N. Salisbury St.
Rm. 312
Raleigh, NC 27603

14. They were in fact received by the addressee on September 30, 2019. Attached is the genuine tracking information.

15. Copies of the Summons and Complaint were sent by UPS to defendants North Carolina Board of Elections, Damon Circosta, Jeff Carmon III, David Black, Stella Anderson, and Ken Raymond addressed as follows:

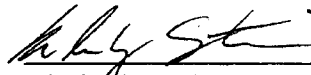
Katelyn Love
Acting General Counsel
430 N. Salisbury St.
Suite 3128
Raleigh, NC 27603

16. They were in fact received by the addressee on September 30, 2019. Attached is the genuine acceptance of service.
17. Copies of the Summons and Complaint were sent by email to counsel for defendants North Carolina Board of Elections, Damon Circosta, Jeff Carmon III, David Black, Stella Anderson, and Ken Raymond, addressed as follows:

Paul M. Cox
Special Deputy Attorney General
pcox@ncdoj.gov

18. On September 27, 2019, Mr. Cox agreed to receive service on behalf of those defendants, as documented in the Return of Service section in the attached summonses forms.

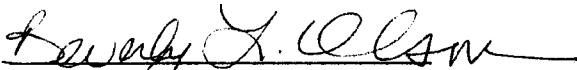
This the 1st day of October, 2019.



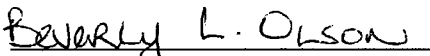
Kimberly Stein

Sworn to and Subscribed before me

this the 1st day of October, 2019.

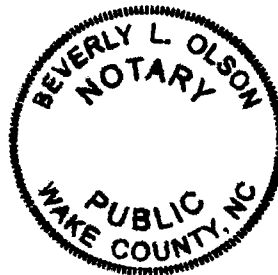


Notary Public



Printed Name

My commission expires: May 12, 2024



Respectfully submitted, this the 1st day of October, 2019.



Narendra K. Ghosh, NC Bar No. 37649
nghosh@pathlaw.com
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
Tel: (919) 942-5200
Fax: (866) 397-8671

Counsel for Plaintiffs

Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850792204917



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850792204917</u>
Ship To:	Philip E. Berger 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M.
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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[For Questions, Visit Our Help and Support Center](#)

Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850793590865



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850793590865</u>
Ship To:	Warren Daniel 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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[For Questions, Visit Our Help and Support Center](#)

Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850793100876



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850793100876</u>
Ship To:	Ralph E. Hise, Jr. 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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Please do not reply directly to this email. UPS will not receive any reply message.

[Review the UPS Privacy Notice](#)

[For Questions, Visit Our Help and Support Center](#)

Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850793021283



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850793021283</u>
Ship To:	David R. Lewis 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850790168096



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850790168096</u>
Ship To:	Timothy K. Moore 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:12 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850794997308



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:07 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850794997308</u>
Ship To:	Paul Newton 300 N SALISBURY ST RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	1.0 LBS
Delivery Location:	DOCK CRUZ
Reference Number 1:	NG - National Redistricting

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Kimberly Stein

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, September 30, 2019 10:08 AM
To: Kimberly Stein
Subject: UPS Delivery Notification, Tracking Number 1ZFA25850798884860



CARBON NEUTRAL SHIPMENT

Your package has been delivered.

Delivery Date: Monday, 09/30/2019
Delivery Time: 10:03 AM

At the request of Patterson Harkavy LLP this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	<u>1ZFA25850798884860</u>
Ship To:	Katelyn Love 430 N SALISBURY ST FLOOR 3 RALEIGH, NC 27603 US
UPS Service:	UPS 2ND DAY AIR A.M
UPS Carbon Neutral:	Yes
Number of Packages:	1
Weight:	4.0 LBS
Delivery Location:	OFFICE WATKINS
Reference Number 1:	NG - National Redistricting

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STATE OF NORTH CAROLINA		File No.
Wake County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Plaintiff Rebecca Harper Address 1841 Stonebanks Loop City, State, Zip Cary NC 27518		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4
VERSUS		
Name Of Defendant(s) David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton, Timothy Moore, Philip Berger, NC State Board of Elections, Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III, David C. Black		
To Each Of The Defendant(s) Named Below: Name And Address Of Defendant 1 North Carolina State Board of Elections C/O Katelyn Love, Acting General Counsel 430 N. Salisbury St., Suite 3128 Raleigh NC 27603		Name And Address Of Defendant 2 Damon Circosta C/O Katelyn Love, Acting General Counsel 430 N. Salisbury St., Suite 3128 Raleigh NC 27603
<div style="display: flex; align-items: center;"> <div> <p>IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!</p> <p>¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!</p> </div> </div> <p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		
Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff) Burton Craigie 100 Europa Dr. Suite 420 Chapel Hill NC 27517		Date Issued 9-27-19 Time 9 AM <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM Signature <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		Date Of Endorsement Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
<p>NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>		

(Over)

RETURN OF SERVICE			
I certify that this Summons and a copy of the complaint were received and served as follows:			
DEFENDANT 1			
Date Served 9/27/19	Time Served 12:26	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant NCSBE
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.			
Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)			
<input checked="" type="checkbox"/> Other manner of service (specify) <div style="font-size: 1.2em; margin-top: 10px;">Acceptance by consent by defendant's attorney. Paul n. S</div>			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
DEFENDANT 2			
Date Served 9/27/19	Time Served 12:26	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant Damon Cicosta
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.			
Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)			
<input checked="" type="checkbox"/> Other manner of service (specify) <div style="font-size: 1.2em; margin-top: 10px;">Same as above. Paul n. S</div>			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return		
Date Received	Name Of Sheriff (type or print)		
Date Of Return	County Of Sheriff		
AOC-CV-100, Side Two, Rev. 4/18 © 2018 Administrative Office of the Courts			

19 CV 012667

STATE OF NORTH CAROLINA

File No.

Wake County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Rebecca Harper

Address

1841 Stonebanks Loop

City, State, Zip

Cary NC 27518

VERSUS

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton,
Timothy Moore, Philip Berger, NC State Board of Elections,
Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III,
David C. Black

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Jeff Carmon III
C/O Katelyn Love, Acting General Counsel
430 N. Salisbury St., Suite 3128
Raleigh NC 27603

Name And Address Of Defendant 2

David C. Black
C/O Katelyn Love, Acting General Counsel
430 N. Salisbury St., Suite 3128
Raleigh NC 27603**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!****¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!****Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!**

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Burton Craige
100 Europa Dr.
Suite 420
Chapel Hill NC 27517

Date Issued

9-27-19

Time

9

☒ AM☐ PM

Signature

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

AOC-CV-100, Rev. 4/18

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	RETURN OF SERVICE	
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I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served 9/27/19	Time Served 12:26	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant Teff Carmon Jr
-------------------------------	-----------------------------	--	--

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☒ Other manner of service (specify)

Acceptance by consent by defendant's attorney. Part 1 &

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served 9/27/19	Time Served 12:26	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant David C. Block
-------------------------------	-----------------------------	--	--

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☒ Other manner of service (specify)

Same as above Part 1. Sp

- ☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA

File No.

Wake County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Rebecca Harper

Address

1841 Stonebanks Loop

City, State, Zip

Cary NC 27518

VERSUS

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

David R. Lewis, Ralph E. Hise, Warren Daniel, Paul Newton,
Timothy Moore, Philip Berger, NC State Board of Elections,
Damon Circosta, Stella Anderson, Ken Raymond, Jeff Carmon III,
David C. Black

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Stella Anderson
C/O Katelyn Love, Acting General Counsel
430 N. Salisbury St., Suite 3128
Raleigh NC 27603

Name And Address Of Defendant 2

Ken Raymond
C/O Katelyn Love, Acting General Counsel
430 N. Salisbury St., Suite 3128
Raleigh NC 27603

IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Burton Craige
100 Europa Dr.
Suite 420
Chapel Hill NC 27517

Date Issued

9-27-19

Time

9:27 AM ☒ AM ☐ PM

Signature

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

	RETURN OF SERVICE	
--	--------------------------	--

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served <i>9/27/19</i>	Time Served <i>12:26</i>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant <i>Stella Anderson</i>
-------------------------------	-----------------------------	--	---

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☒ Other manner of service (specify)

Acceptance by consent by defendant's attorney. per m. Cox

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served <i>9/27/19</i>	Time Served <i>12:26</i>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant <i>Ken Raymond</i>
-------------------------------	-----------------------------	--	---

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☒ Other manner of service (specify)

Same as above. per m. Cox

- ☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants North Carolina State Board of Elections and its members via *email*, and served a copy of the foregoing to the remaining defendants by *U.S. mail*, addressed to the following persons at the following addresses which are the last which are the last addresses known to me:

Warren Daniel
300 N. Salisbury Street Rm. 627
Raleigh, N.C. 27603

Paul Newton
300 N. Salisbury Street Rm. 312
Raleigh, N.C. 27603

David R. Lewis
16 West Jones Street Rm. 2301
Raleigh, N.C. 27601

Ralph E. Hise
300 N. Salisbury St. Rm. 300-A
Raleigh, N.C. 27603

Timothy K. Moore
16 West Jones Street Rm. 2304
Raleigh, N.C. 27601

Philip E. Berger
16 West Jones Street Rm. 2007
Raleigh, N.C. 27601

This the 1st day of October, 2019.



Narendra K. Ghosh, NC Bar No. 37649

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
2019 SEP 30 PM 2:42
CLERK OF SUPERIOR COURT
PY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, et al.,
Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIR OF THE HOUSE STANDING
COMMITTEE ON REDISTRICTING, et al.,
Defendants.

**MOTION FOR EXPEDITED BRIEFING
AND RESOLUTION OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiffs, who are individual voters from each of North Carolina's 13 congressional districts, respectfully request that the Court expedite briefing and resolution of their Motion for a Preliminary Injunction, filed simultaneously with this motion. In support of their motion to expedite, Plaintiffs state as follows:

1. Plaintiffs filed the Verified Complaint in this action on September 27, 2019, challenging North Carolina's 2016 congressional redistricting plan (the "2016 Plan") as an illegal partisan gerrymander in violation of the North Carolina Constitution's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. Defendants are the chairs of the state House and state Senate redistricting committees, the Speaker of the state House, the President Pro Tempore of the state Senate (collectively, "Legislative Defendants"), and the State Board of Elections and its members (collectively, "State Defendants"). As of today, Plaintiffs have effectuated service on all Defendants.

2. Today, one business day after filing this action, Plaintiffs filed a motion for a preliminary injunction (1) barring Defendants from administering, preparing for, or moving

forward with the 2020 primary and general congressional elections using the 2016 Plan; and (2) establishing a remedial process to create a new plan that complies with the North Carolina Constitution, including a court-ordered remedial plan if the General Assembly fails timely to enact a new plan comporting with the North Carolina Constitution.

3. Plaintiffs and the public have a strong interest in resolving this motion for preliminary injunction as expeditiously as possible to ensure that new, lawful districts can be established for the 2020 primary and general elections. In nearly every state and federal legislative election held in North Carolina since 2010, voters have been forced to cast their ballots in districts that the courts ruled unconstitutional. The 2011 state House and Senate plans were unconstitutional racial gerrymanders, and the 2017 replacements were unconstitutional partisan gerrymanders, as a three-judge panel of this Court recently held. Likewise, the 2011 congressional plan was an unconstitutional racial gerrymander. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017). And the 2016 Plan at issue in this case is an unconstitutional partisan gerrymander. North Carolinians should not be forced again to vote in unconstitutional districts.

4. While this Court could push back the March 2020 congressional primaries to provide more time to decide the preliminary injunction motion and establish a remedial plan, the Court can avoid that step by proceeding expeditiously. In *Common Cause v. Lewis*, the State Board of Elections advised that the final state legislative districts had to be in place by the end of November 2019 or potentially early December 2019 to be used in the March 2020 primaries. If the same timeline applies for the congressional districts, there is adequate time to resolve Plaintiffs' preliminary injunction motion on the merits and establish a remedial plan.

5. On the merits, this is a straightforward case. No discovery or extensive expert analysis is needed for this Court to issue a preliminary injunction. As Plaintiffs' motion explains, the Court can and should enjoin the 2016 Plan based on the official legislative criteria for creation of the plan and the admissions of Legislative Defendants and their mapmaker, Dr. Hofeller. All of the relevant facts pertinent to the preliminary injunction are incontrovertible and undisputed.

6. The law is as clear as the facts. In *Common Cause*, this Court established that "the constitutional rights of North Carolina citizens are infringed when the General Assembly ... draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters." 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Irrespective of federal law, partisan gerrymandering violates the North Carolina Constitution's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* at 9, 307-31. By Legislative Defendants' own contemporaneous admissions, the 2016 Plan is an extreme partisan gerrymander and therefore violates the North Carolina Constitution under *Common Cause*.

7. Sufficient time likewise remains to establish and implement a remedial plan on the current election schedule, without moving the March 2020 primaries. During the recent remedial phase in *Common Cause*, the General Assembly adopted two separate remedial plans revising a total of 77 state House and state Senate districts over a mere 8-day period. The remedial phase in this case will be much easier, as it involves just one remedial plan with only 13 districts. There is ample time for the Court to decide this motion, allow the General Assembly two weeks to redraw the map, and review the remedial map with the assistance of a referee.

8. To promote a timely resolution and establish a remedial plan for use in the March 2020 primaries, Plaintiffs propose the following schedule:

- Defendants shall file their responses to Plaintiffs' motion for preliminary injunction on or before October 14, 2019.
- Plaintiffs shall file their reply on or before October 18, 2019.
- Any hearing on the motion shall be held the week of October 21 to 25, 2019, with the specific date and time to be set by the Court.
- A decision on the motion for preliminary injunction will issue by November 1, 2019.

9. Plaintiffs' proposed schedule will allow adequate time for the establishment and implementation of a remedial plan for use in 2020 on the current election schedule. Specifically, if the Court grants the preliminary injunction, it can give the General Assembly two weeks—until November 15, 2019—to enact a new plan that comports with the North Carolina Constitution, and direct the General Assembly to transmit the new plan to the Court (both a PDF and the shape file and block assignment files) by November 18. Next, the parties would submit simultaneous briefs supporting, objecting to, or otherwise addressing the General Assembly's proposed new plan by 5:00 p.m. on November 22, 2019. The Court then could review the General Assembly's proposed plan with the assistance of a referee, and publish the final remedial plan one week later—by 5:00 p.m. on November 29, 2019. This will allow the State Board of Elections to implement the remedial plan for use in the March 2020 primaries.

10. While sufficient time remains to resolve Plaintiffs' preliminary injunction motion and implement a remedial plan on the current election schedule, the schedule can be adjusted to provide effective relief. The State Board of Elections has authority "to make reasonable interim rules and regulations" to move administrative deadlines in the event that any North Carolina election law "is held unconstitutional or invalid by a State or federal court." N.C. Gen. Stat.

§ 163A-742. And this Court has remedial authority to move the 2020 congressional primary elections, if necessary. *See Lewis*, slip op. COL ¶¶ 181-82. The Court could move the primaries under one of two approaches. First, the Court could move all of the State’s 2020 primaries, including for offices other than the U.S. House, to a later date in 2020. Alternatively, the Court could move the primaries for only the U.S. House to a later date, while keeping the primaries for other offices on the currently scheduled date of March 3, 2020. One possibility would be to move the congressional primaries to the “Second Primary” date that has taken place in every recent election cycle for primary run-offs.

11. There is precedent for both approaches. In 2002, the North Carolina Supreme Court in *Stephenson v. Bartlett* enjoined the primaries for the state House and state Senate from occurring on the originally scheduled date, 355 N.C. 281, 282, 561 S.E.2d 288 (2002), causing all of the State’s primaries to be moved to a different date, 357 N.C. 301, 303, 582 S.E.2d 247, 249 (2003). And in 2016, after the federal court in *Harris* enjoined the State’s congressional plan as an unconstitutional racial gerrymander, the General Assembly moved *only* the congressional primaries, while leaving other primaries (including the presidential primary) on the originally scheduled date. See Session Law 2016-2 § 1(b). Such changes are not necessary at this stage, however, as the Court has sufficient time to receive briefing and argument, issue a preliminary injunction, and oversee a remedial process under the current election schedule.

WHEREFORE, Plaintiffs request that the Court enter an order expediting briefing and decision on Plaintiffs’ motion for preliminary injunction on the schedule set out above.

Respectfully submitted this the 30th day of September, 2019.

PATTERSON HARKAVY LLP



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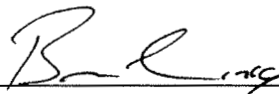
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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19 CVS 012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE
SELECT COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

FILED
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PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION

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Pursuant N.C. R. Civ. P. 65 and N.C. Gen. Stat. § 1-485, Plaintiffs hereby move for a preliminary injunction (1) barring Defendants from administering, preparing for, or moving forward with the 2020 primary and general elections for the U.S. House of Representatives using the current congressional redistricting plan; and (2) setting forth a remedial process to create a new plan that complies with the North Carolina Constitution, including a court-ordered remedial plan if the North Carolina General Assembly fails timely to enact a new plan comporting with the North Carolina Constitution. In support of this motion, Plaintiffs state as follows:

INTRODUCTION

This is a straightforward case. No discovery or extensive expert analysis is needed for this Court to issue a preliminary injunction. The Court can and should enjoin North Carolina's 2016 congressional redistricting plan (the "2016 Plan") based solely on the official legislative criteria for creation of the plan and the admissions of Legislative Defendants and their mapmaker, Dr. Thomas Hofeller. Legislative Defendants freely admitted during the 2016 redistricting process that they were seeking to predetermine congressional election outcomes. They adopted "Partisan Advantage" as an official criterion, directing that the districts be drawn to produce a congressional delegation of "10 Republicans and 3 Democrats." Representative Lewis said that this was the maximum gerrymander possible, and that he was drawing the districts this way because he believes the viewpoints of Democratic voters are worse "for the country." Sure enough, just as Legislative Defendants and Dr. Hofeller intended, Republicans have won 10 of 13 seats in both elections under the 2016 Plan, including in 2018 when Democratic congressional candidates won a majority of the two-party statewide vote after accounting for an uncontested race. All of the relevant facts in this case are incontrovertible and undisputed.

The law is as clear as the facts. In *Common Cause v. Lewis*, a unanimous three-judge panel of this Court held that “the constitutional rights of North Carolina citizens are infringed when the General Assembly ... draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters.” 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Irrespective of federal law, partisan gerrymandering violates the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* at 9, 307-31. The 2016 Plan is an extreme partisan gerrymander that unquestionably violates the North Carolina Constitution under *Common Cause*.

While this Court could push back the March 2020 congressional primaries, the Court avoid that step by proceeding expeditiously. In particular, the Court can resolve this preliminary injunction motion and, if it is granted, oversee a remedial process that will conclude with the final adoption of a remedial plan in late November, which is adequate time for the State Board of Elections to use the remedial plan in the March 2020 primaries. The General Assembly recently adopted two remedial plans for 77 state House and Senate districts over just an 8-day period. The remedial process in this case will involve just one plan with only 13 districts. There is ample time to brief and decide this motion, allow the General Assembly two weeks to draw a new plan, and review their remedial plan with the assistance of a referee.

North Carolinians have voted in unconstitutional congressional districts in every election this decade. They should not be forced to do so again. This Court should issue a preliminary injunction enjoining the 2016 Plan and ordering a new, fair plan for the 2020 elections.

FACTUAL BACKGROUND

A. Federal Courts Strike Down the 2011 Plan as an Illegal Racial Gerrymander

“In the 2010 elections, as a part of a national Republican effort to flip state legislative chambers in order to gain control of redistricting after the 2010 Census, Republicans won

majorities in the North Carolina House of Representatives and the North Carolina Senate for the first time since 1870.” *Common Cause*, 18-CVS-014001, slip op. FOF ¶ 1. With their newfound control of both chambers of the General Assembly, Republican legislative leaders set out in 2011 to redraw the boundaries of the State’s 13 congressional districts. As senior chairs of the House and Senate Redistricting Committees, Legislative Defendant Representative David Lewis and Senator Robert Rucho oversaw the drawing of the 2011 congressional redistricting plan (the “2011 Plan”). Decl. of Elisabeth S. Theodore (“Theodore Decl.”) Ex. B, Deposition of Representative David Lewis (“Lewis Dep.”) at 14:15-15:24, *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 26, 2017). They engaged Dr. Thomas Hofeller to draw the plan. Theodore Decl. Ex. A, Deposition of Thomas B. Hofeller (“Hofeller Dep.”) at 123:8-23, *Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 24, 2017).

On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). In defense of the 2011 Plan, the State contended that, rather being than a racial gerrymander, the 2011 Plan was “‘strictly’ [a] political gerrymander.” *Cooper v. Harris*, 137 S. Ct. 1455, 1473 (2017). In affirming the three-judge panel’s ruling, the U.S. Supreme Court noted that the State’s “sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics.” *Id.* at 1455 n.7.

North Carolina conducted two congressional elections using the 2011 Plan before it was struck down. The plan’s unconstitutional racial gerrymander resulted in the election of 9 Republicans and 4 Democrats in 2012, and 10 Republican and 3 Democrats in 2014.

B. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

Following the decision in *Harris*, the General Assembly set out in 2016 to draw a new congressional plan. With Republicans at that time holding supermajority control of both chambers, Representative Lewis and Senator Rucho again took charge of the mapmaking process and again engaged Dr. Hofeller to draw the remedial plan. On February 9, 2016, in a meeting at Dr. Hofeller's home, Representative Lewis and Senator Rucho told Dr. Hofeller to create the new districts using political data, including precinct-level election results from statewide elections dating back to 2008. *See* Hofeller Dep. at 178:14-19, 180:10-181:5; Lewis Dep. at 38:15-40:4, 49:3-7, 52:9-53:5, 55:1-7, 60:1-8; Theodore Decl. Ex. J, Deposition of Senator Robert A. Rucho ("Rucho Dep.") at 31:16-32:13, 33:6-20, 35:16-21, 36:17-37:8, *Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 25, 2017). Specifically, they instructed Dr. Hofeller "to create a map that was likely to elect 10 Republicans and 3 Democrats." *See* Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

Dr. Hofeller admitted that he sought to achieve Legislative Defendants' partisan objectives by drawing Districts 1, 4, and 12 to be "predominantly Democratic districts." Hofeller Dep. at 192:10-16. With respect to the 10 remaining districts, Dr. Hofeller "assign[ed] voters to the districts ... based on their voting history" in order to make all 10 of these districts "Republican opportunity-to-elect districts." Hofeller Dep. at 128:22-129:2.

Dr. Hofeller carried out this gerrymandering through a partisanship formula he created that scored the partisan performance of every voting tabulation district (VTD) in North Carolina. His partisanship formula measured the average Democratic and Republican vote share in each VTD across seven statewide elections from 2008 to 2014. Hofeller Dep. at 212:16-215:7; Theodore Decl. Ex. H, Second Deposition of Thomas Hofeller ("Hofeller Dep. II") at 260:18-

267:17, *Rucho*, No. 16-cv-1026 (M.D.N.C. Feb. 10, 2017); *see* Theodore Decl. Ex. G, Hofeller Dep. II Ex. 42 (Dr. Hofeller’s partisanship formula). Dr. Hofeller testified that he used the averaged results from these seven elections “to get a pretty good cross section of what the past vote had been,” Hofeller Dep. at 212:16-213:9, and “[t]o give [him] an indication of the two-party partisan characteristics of VTDs,” Hofeller Dep. II at 266:24-267:6. He believed that the formula would give him useful information regarding the “partisan characteristics” of the VTDs, because individual VTDs “tend to carry the same characteristics through a string of elections” in that they “line up from one end of the ... political spectrum to the other in roughly the same order.” *Id.* at 274:1-16. Dr. Hofeller had previously testified that “he had drawn numerous plans in the state of North Carolina over decades,” and in his experience, “the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it.” Theodore Decl. Ex. L, Trial Testimony of Thomas Hofeller (“Hofeller Testimony”) at 525:6-10, *Harris v. McCrory*, No. 13-cv-949 (M.D.N.C. Oct. 14, 2015), *aff’d by Cooper*, 137 S. Ct. 1455; *see* Hofeller Dep. at 149:5-18. “So once a precinct is found to be a strong Democratic precinct,” Dr. Hofeller explained, “it’s probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts.” Hofeller Testimony at 525:14-17.

Dr. Hofeller testified that he then used this formula reflecting “past voting behavior” to “assign[] VTDs to various congressional districts in drafting the 2016 plan.” Hofeller Dep. at 132:14-18, 212:16-215:7; *see* Hofeller Dep. II at 267:7-17 (Dr. Hofeller testifying that he “used this [partisanship] formula” in deciding “where [he] would put the lines for districts”). More specifically, working in Maptitude, Dr. Hofeller color-coded VTDs based on their partisan performance and assigned VTDs to districts based on this partisan color-coding. Hofeller Dep.

at 212:16-215:7, Hofeller Dep. II at 260:18-267:17. In other words, he “us[ed] this formula to create a [colored] thematic to show a percentage of [the] Republican vote” share in each VTD. Hofeller Dep. II at 271:11-273:3. Dr. Hofeller used a “rainbow” color scheme to display partisanship in Maptitude based on his formula. *Id.* at 270:7-9. He testified that he “satisf[ied] the legislature’s desire to obtain a partisan advantage” by using the “VTD thematic.” *Id.* at 281:7-11. In addition to assigning VTDs to districts based on partisanship, Dr. Hofeller used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

Dr. Hofeller testified that he advised Representative Lewis of the projected partisan performance of districts for which the partisan result was not “really obvious.” *Id.* at 290:17-25. Representative Lewis testified that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, he assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race, because this election was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished the final plan before the Joint Redistricting Committee ever met, and that Dr. Hofeller pre-drew the plan with partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18.

From roughly February 10 to 13, 2016, Representative Lewis and Senator Rucho met with Dr. Hofeller to review draft plans. Lewis Dep. at 58:13-61:17, 73:7-74:7. Those draft plans were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the General Assembly for approval. *Id.* at 77:7-20. Dr. Hofeller and Representative Lewis agreed

on a draft plan on February 12 or 13, 2016, *id.*, and that plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican legislative leaders appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 24 Republicans and 12 Democrats. *See* Theodore Decl. Ex. E, Feb. 17, 2016 Tr. of Proceedings, Joint Comm. on Redistricting (“Feb. 17 Joint Comm. Tr.”), at 3:9-6:17.

At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “Adopted Criteria”) to govern creation of the 2016 Plan. Theodore Decl. Ex. D, Feb. 16, 2016 Tr. of Proceedings, Joint Comm. on Redistricting (“Feb. 16 Joint Comm. Tr.”), at 14:16-98:20. Most notably, the Joint Committee adopted “Partisan Advantage” as an official criterion, explicitly directing that the new plan preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. *Id.* at 67:2-69:23. This criterion stated:

Partisan Advantage: The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

Theodore Decl. Ex. C, Adopted Criteria.

Representative Lewis described the “Partisan Advantage” criterion as requiring the mapmaker “to seek partisan advantage for the Republicans.” Theodore Decl. Ex. F, Feb. 19, 2016 Tr. of Proceedings, N.C. House of Representatives, Floor Session One (“Feb. 19 House Floor Tr.”), at 34:16-18. He told the Committee that he would “draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats *because I do not believe it’s possible to draw a map with 11 Republicans and 2 Democrats.*” Feb. 16 Joint Comm. Tr. at 50:6-10 (emphasis

added). Representative Lewis “acknowledge[d] freely that *this would be a political gerrymander.*” *Id.* at 48:4-5 (emphasis added).

The Joint Committee adopted “Political Data” as another criterion. Feb. 16 Joint Comm. Tr. at 43:21-47:5. This criterion stated:

Political Data: The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

See Adopted Criteria.

Leaving no doubt as to how this political data would be used, Representative Lewis told the Joint Committee that he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Feb. 16 Joint Comm. Tr. at 53:24-54:4.

The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents. *See id.* at 14:16-18:3, 21:9-24:18, 91:17-94:17, 95:15-98:20; *see also* Adopted Criteria.

The Joint Committee adopted the Political Data and Partisan Advantage criteria on party-line votes. The other criteria were passed on a bipartisan basis. Representative Lewis told the Committee that “the criteria that will be available to the mapmaker ... will only be the criteria that this ... committee has adopted,” Feb. 16 Joint Comm. Tr. at 140:8-13, despite knowing that the 2016 Plan was “for the most part finished by the time the criteria were formally adopted by

the committee,” Hofeller Dep. at 177:9-14. He later emphasized that “the criteria that this committee debated and adopted ... are the criteria that were used to draw these maps.” Feb. 17 Joint Comm. Tr. at 43:4-14.

Legislative Defendants then formally engaged Dr. Hofeller, who downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer. *See* Lewis Dep. at 138:6-8; Hofeller Dep. at 197:22-198:17. Dr. Hofeller later testified that the 2016 Plan “conformed to the criteria” adopted by the Joint Committee, which included the criteria concerning Partisan Advantage and Political Data. Hofeller Dep. at 178:20; *see id.* at 129:10-15.

On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Feb. 17 Joint Comm. Tr. at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would “produce an opportunity to elect ten Republican members of Congress.” *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

On February 19, 2016, the full House debated the 2016 Plan. During the debate, Representative Lewis “freely acknowledge[d] that [he] sought partisan advantage.” Feb. 19 House Floor Tr. at 31:14-17. He defended the Partisan Advantage criterion by stating: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan. *See*

Theodore Decl. Ex. K, Defendants' Response to Plaintiffs' First RFAs at No. 25, *Rucho*, No. 16-cv-1026.

Senator Rucho testified that the 2016 Plan "satisfied" "all criteria," including the criteria requiring a 10-3 partisan advantage for Republicans. Rucho Dep. 193:24-194:14. In a sworn declaration submitted in the federal case, Dr. Hofeller calculated the projected partisan performance of all 13 districts under the 2016 Plan using his seven-election partisanship formula. Theodore Decl. Ex. I, Second Decl. of Thomas B. Hofeller ("Hofeller Decl.") at 9, *Rucho*, No. 16-cv-1026 (M.D.N.C. Oct. 26, 2017). He concluded that the 2016 Plan (labeled the "Contingent Plan") would result in three Democratic districts and 10 Republican districts where the Republicans had at least 53% of the vote based on his formula. *Id.* Dr. Hofeller's calculations are displayed below:

Contingent Plan	
Dist.	% Rep.
01	31.20%
02	55.63%
03	55.04%
04	37.02%
05	55.71%
06	54.41%
07	53.68%
08	54.94%
09	55.72%
10	57.95%
11	57.08%
12	36.18%
13	53.51%

C. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

The 2016 Plan has achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the two-party statewide vote, yet won only 3 of 13 seats (23%). *See* SBOE, Nov. 8, 2016 Available Election-related Files (“2016 Results”), <https://bit.ly/2nM2NIS>.¹

The results were even more striking in 2018. Despite the blue wave that year, Democrats were unable to flip a single seat. In fact, adjusting for a district that a Republican won in an uncontested race in 2018, Democrats won a *majority* of the two-party statewide vote in the 2018 congressional elections, but still won only the same 3 of 13 seats. *See* SBOE, Nov. 6, 2018 Available Election-related Files (“2018 Results”), <https://bit.ly/2mW8CNx>.

The results of the individual races in 2018 reveal how Legislative Defendants achieved this feat. The following table shows each party’s share of the two-party vote in the districts that the party won in 2018:²

¹ All of the prior election results in this brief were calculated using the final election results posted on the State Board of Elections website. This Court can take judicial notice of this information. N.C. R. Evid. 201(b).

² Data for this table was gathered from official North Carolina SBOE election results. *See* 2018 Results. For District 9, this table uses the results of the September 2019 special elections. *See* SBOE, Sep. 10, 2019 Unofficial Local Election Results - Statewide (2019), <http://bit.ly/2nC6LgU>. To adjust for the uncontested race in District 3, this table assigns the Democratic and Republican candidates the share of the two-party vote received by the Democratic and Republican candidates in the special election held in District 3 in September 2019.

District	Democratic Vote Share	Republican Vote Share
1	69.9%	
4	75.1%	
12	73.1%	
2		52.8%
3		100.0%
5		57.0%
6		56.5%
7		56.5%
8		55.3%
9		51.0%
10		59.3%
11		60.4%
13		53.1%
Statewide Vote Share Before Adjusting for Uncontested Race	48.9%	51.1%
Statewide Vote Share After Adjusting for Uncontested Race	50.9%	49.1%
Percentage of Seats Won	23.1%	76.9%

This table illustrates the 2016 Plan's packing and cracking in action. In the three packed districts, Democrats won enormously lopsided victories, with between 69.9% and 75.1% of the vote in each district. By contrast, victorious Republican candidates won their seats by much smaller margins, with between 51.0% and 60.4% of the vote in all contested districts. The 2016 Plan thus guaranteed that Democrats would win three seats by very large margins, while Republicans would win the other ten seats by much smaller, although still comfortable, margins.

While not necessary to resolve this motion, extensive expert analysis conducted for purposes of the federal partisan gerrymandering challenge to the 2016 Plan confirms that the 2016 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the University of Michigan, generated thousands of nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting

principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Based on this simulation methodology, Dr. Chen concluded that the 2016 Plan is extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused a shift of three to five seats in favor of the Republican Party. *See* Expert Report of Jowei Chen, *Rucho*, No. 16-cv-1026 (M.D.N.C. Mar. 1, 2017).³ Dr. Jonathan Mattingly, the chairman of the Duke Mathematics Department, generated over 24,000 nonpartisan simulated maps respecting North Carolina’s political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Based on this simulation methodology, Dr. Mattingly likewise concluded that the 2016 Plan is extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused several seats to shift in favor of the Republican Party. *See* Declaration and Expert Report of Jonathan C. Mattingly, *Rucho*, No. 16-cv-1026 (M.D.N.C. Mar. 6, 2017).⁴

D. The 2016 Plan Packs and Cracks Democratic Voters in Every District

The 2016 Plan meticulously packs and cracks Democratic voters in each and every district—without exception.

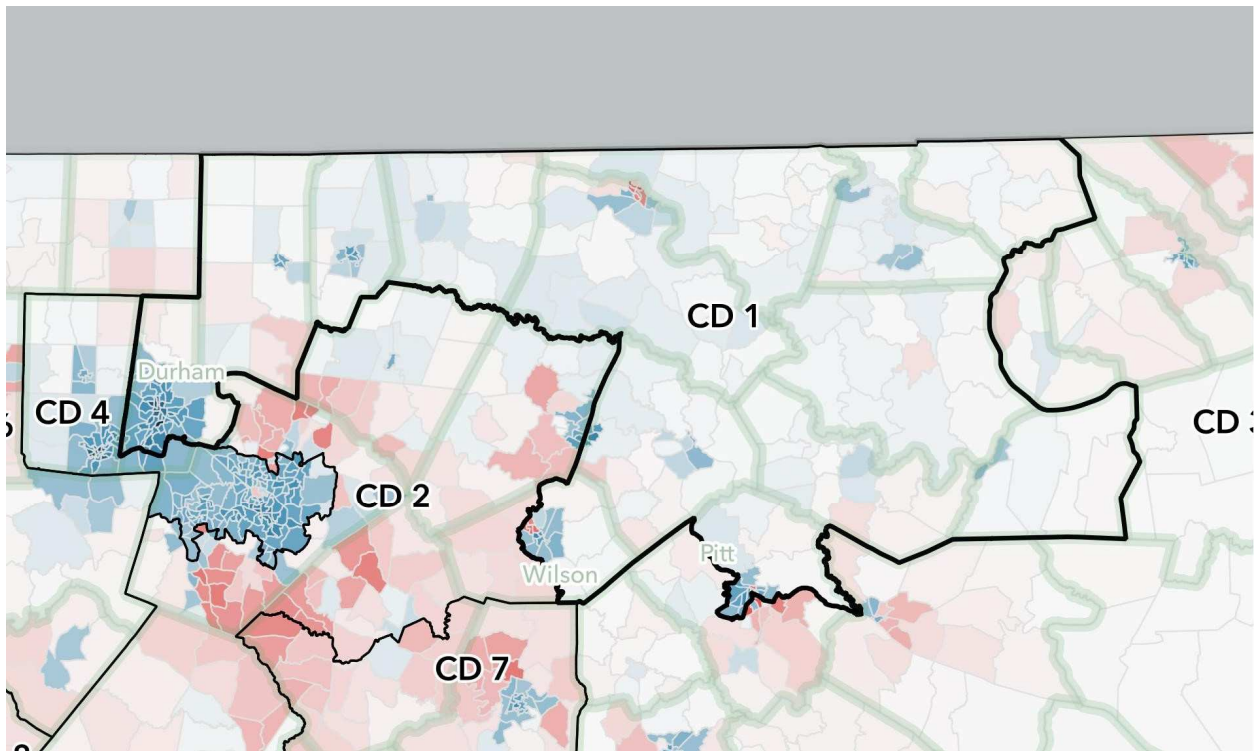
Congressional District 1

District 1 is a packed Democratic district that stitches together the heavily Democratic areas of Durham, Wilson, and Pitt Counties with a handful of rural Democratic counties in the northeastern portion of the State. Dr. Hofeller admitted that he intentionally drew District 1 to be “predominantly Democratic.” Hofeller Dep. at 192:7-16.

³ Submitted as LDTX244 in *Common Cause v. Lewis*.

⁴ <http://s10294.pcdn.co/wp-content/uploads/2016/05/Expert-Report-of-Jonathan-Mattingly.pdf>.

The following image (and others below) shows the district's boundaries and the partisanship of its VTDs using the results of the 2016 North Carolina Attorney General race, with darker blue shading representing larger Democratic vote margins and darker red shading indicating larger Republican vote margins (both normalized by acreage):⁵



Esselstyn Decl. at 3.

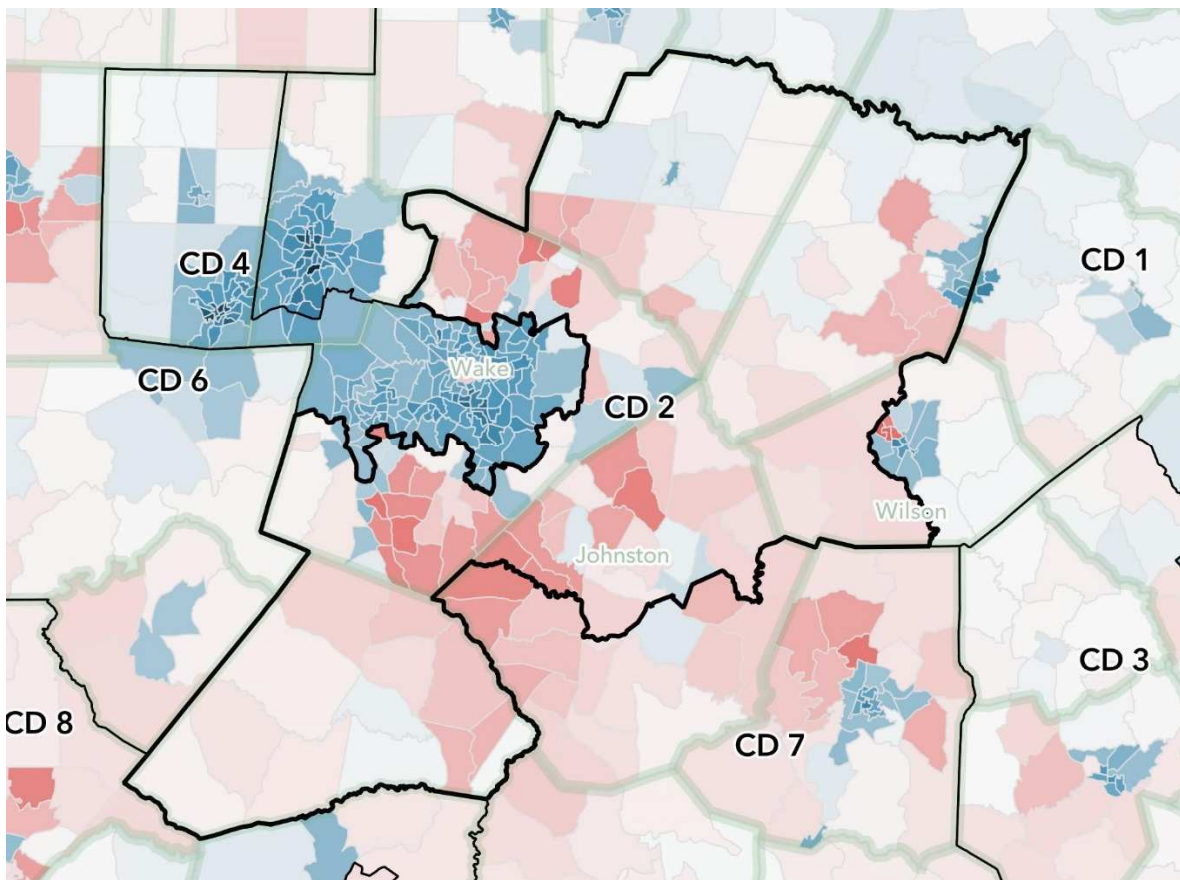
The 2016 Plan divides Pitt County for partisan ends, placing Pitt County's most Democratic VTDs in District 1 to the north, while putting the county's more moderate and Republican VTDs in District 3 to the south. It does the same to Wilson County. In dividing Wilson County, the plan builds a fence between Democratic and Republican voters, nearly straight down the middle of the county, putting the Democratic VTDs in District 1 to the east and the Republican VTDs in District 2 to the west.

⁵ Plaintiffs' expert, Blake Esselstyn, created all of the images in this brief using map data and election results obtained from the North Carolina General Assembly. See Decl. of Blake Esselstyn ("Esselstyn Decl.") ¶ 6.

The 2016 Plan's packing of Democratic voters in District 1 has produced an overwhelmingly Democratic district. In 2016 and 2018, the Democratic candidate won District 1 with 70.3% and 69.9% of the vote, respectively.

Congressional District 2

District 2 cracks Democratic voters. It carefully avoids the most Democratic areas of Wake County and Wilson County, instead picking up only those counties' moderate and Republican-leaning VTDs. The map further cracks the Democratic voters of Johnston County, splitting them between District 2 to the north and District 7 to the south.

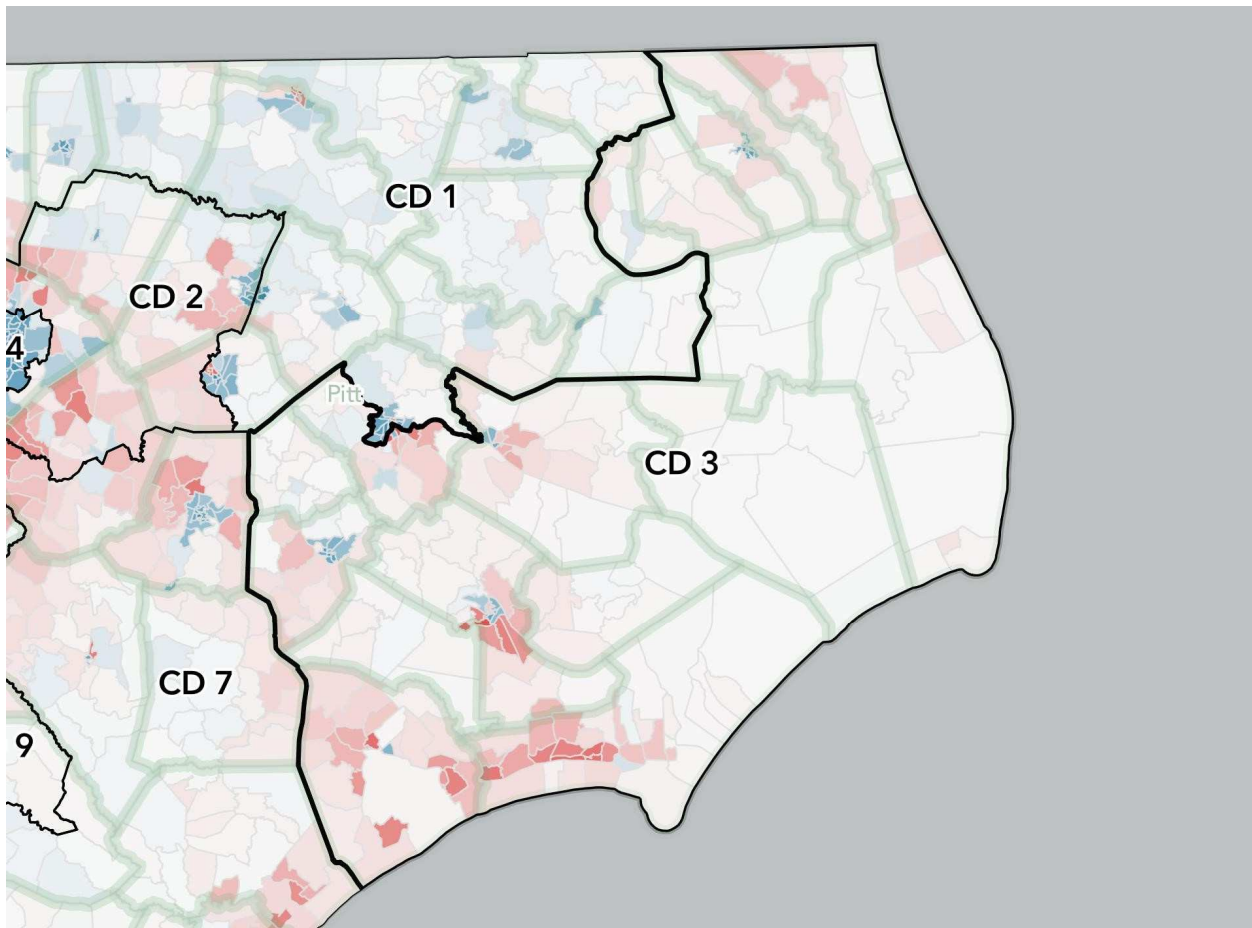


Esselstyn Decl. at 4.

Legislative Defendants' extreme gerrymandering of this district has ensured that it remains a Republican seat. The Republican candidate won District 2 with 56.7% and 52.8% of the vote in 2016 and 2018, respectively.

Congressional District 3

Legislative Defendants likewise engineered District 3 to be a safe Republican seat. Whereas District 1 was the recipient of all of Pitt County's most Democratic VTDs, District 3 contains all of Pitt County's most Republican VTDs. The district further avoids a handful of moderate and Democratic counties in eastern North Carolina.

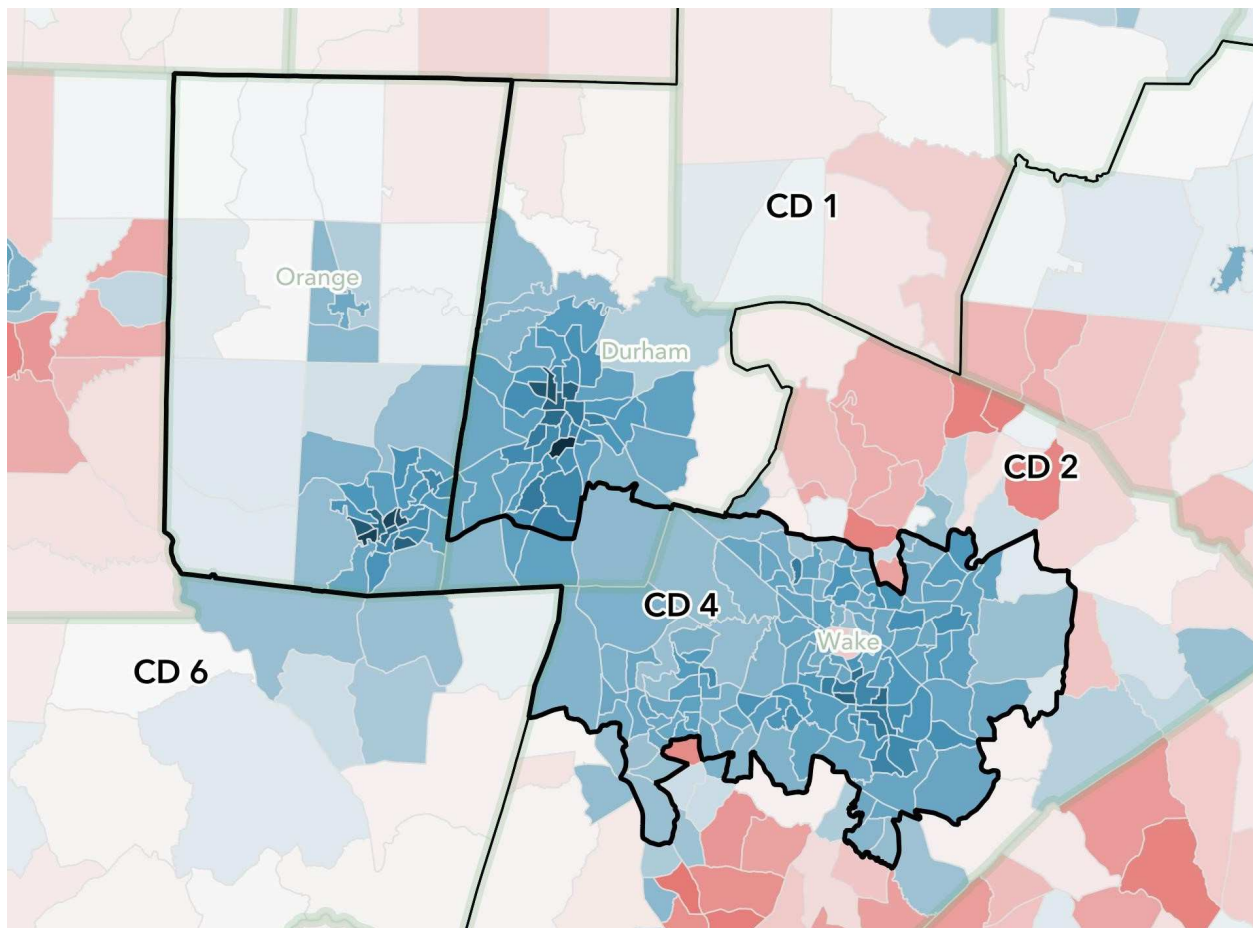


Esselstyn Decl. at 5.

District 3 has performed as designed. The Republican candidate won 67.2% of the vote in 2016, and won uncontested in 2018.

Congressional District 4

District 4 is a clear example of the subordination of traditional districting principles to partisan ends. Dr. Hofeller admitted that he intentionally drew District 4 to be “predominantly Democratic.” Hofeller Dep. at 192:7-16. To achieve maximum packing of Democratic voters, District 4 connects Wake County’s most Democratic VTDs with the extremely Democratic VTDs in southern Durham County as well as the entirety of Democratic-leaning Orange County. This allowed Wake County’s more Republican VTDs to be put into District 2 to ensure a Republican seat.

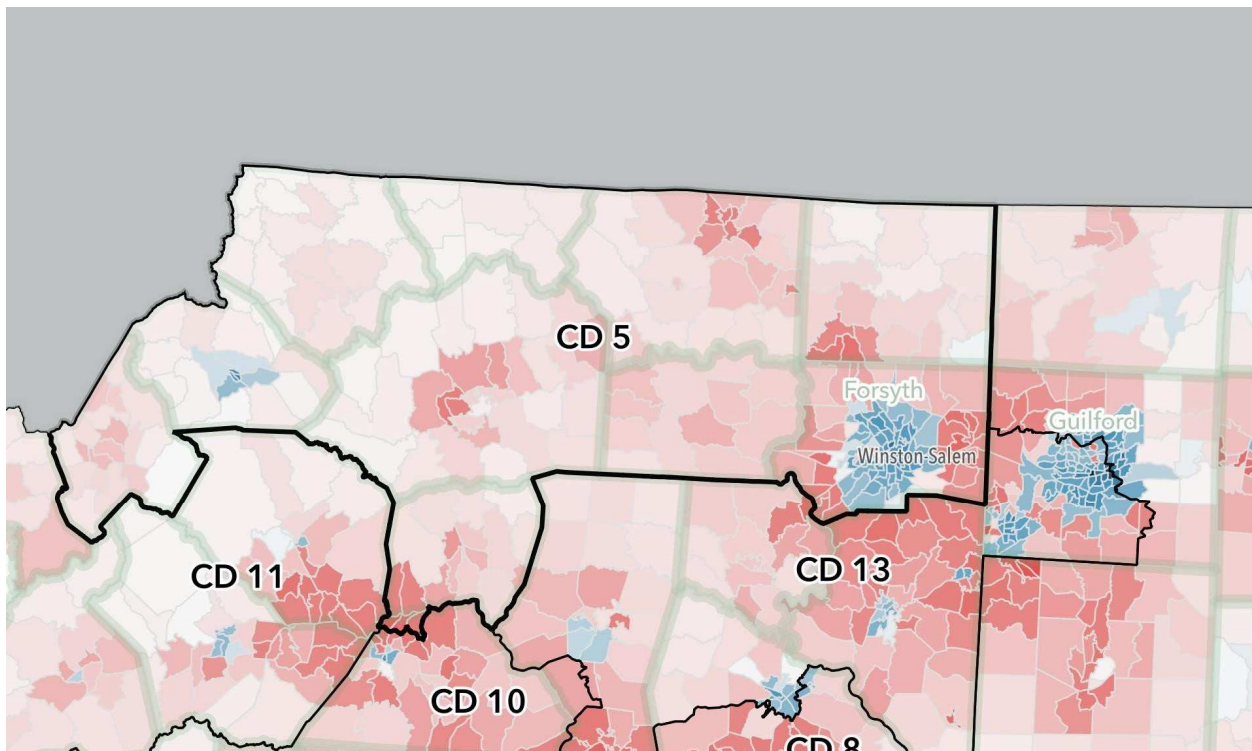


Esselstyn Decl. at 6.

The result of this packing is that the Democratic candidate has won District 4 by lopsided margins, with 68.2% and 75.1% of the vote in 2016 and 2018, respectively.

Congressional District 5

Legislative Defendants constructed District 5 to minimize the voting power of Democratic voters in Forsyth County. The 2016 Plan connects Winston-Salem's predominantly Democratic voters with far-flung rural communities to the west.



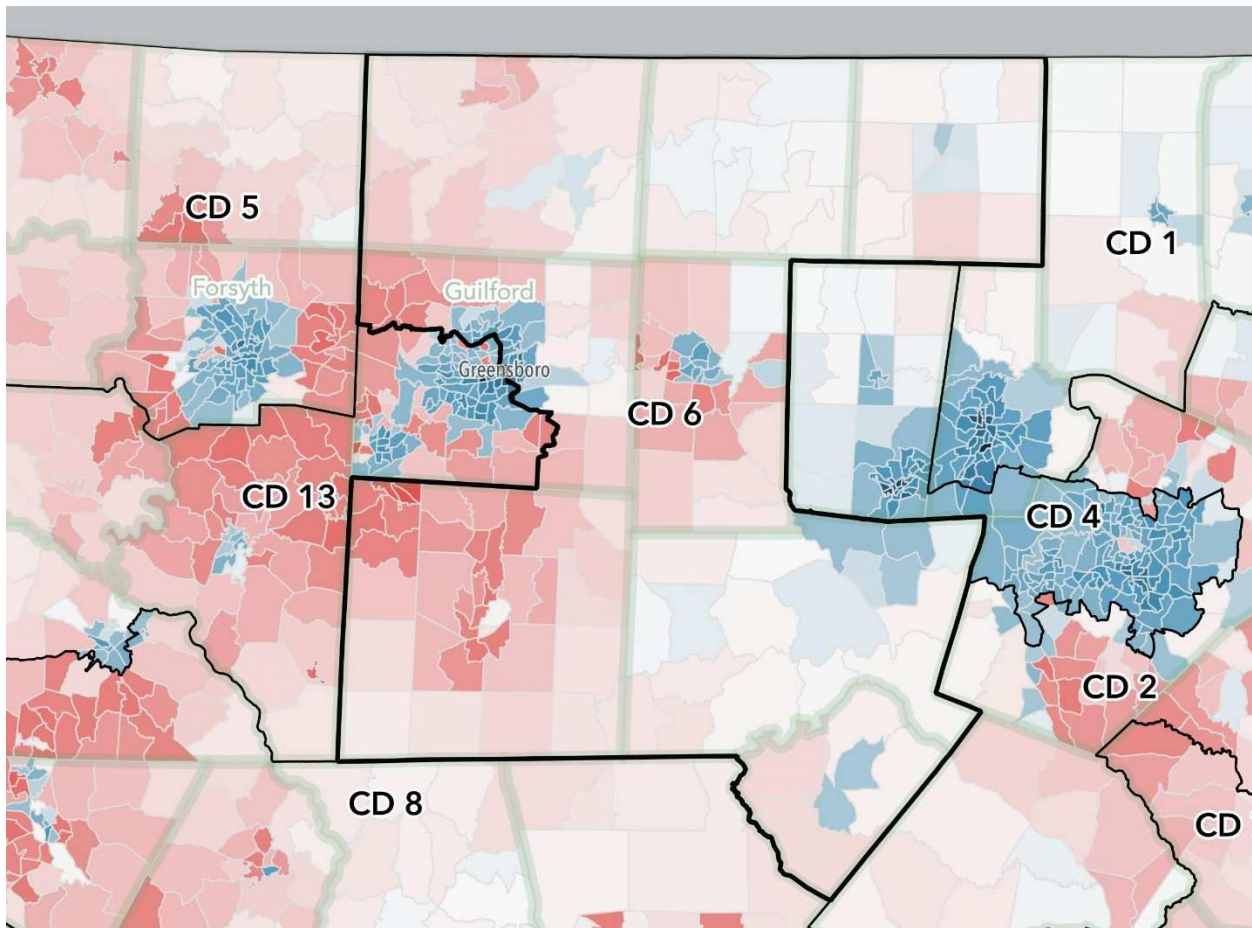
Esselstyn Decl. at 7.

Legislative Defendants succeeded in wasting the votes of the Democratic voters of Forsyth County. District 5 elected a Republican by comfortable margins in the 2016 and 2018 elections, with 58.4% and 57.3% of the vote, respectively.

Congressional District 6

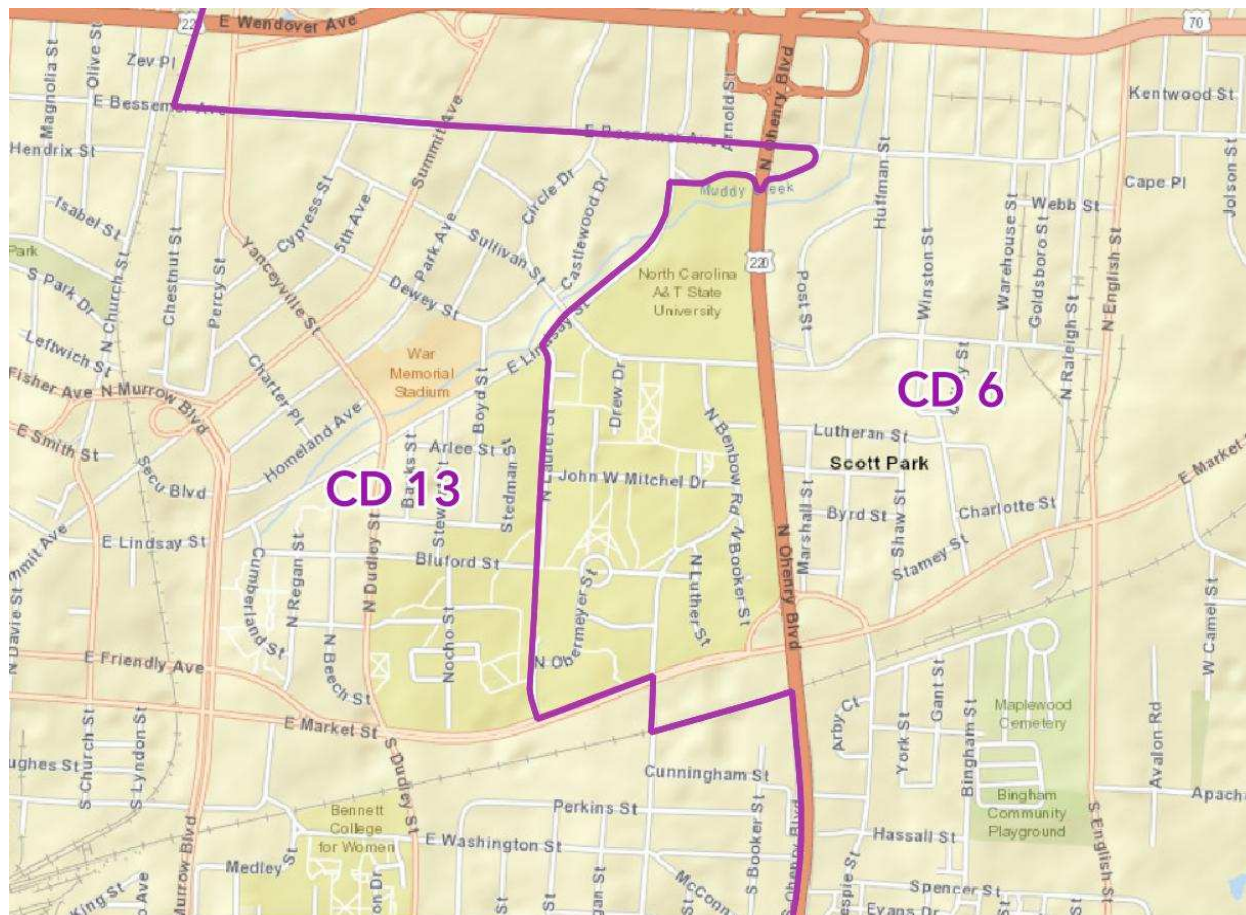
Greensboro is the third-largest city in North Carolina and home to one of the largest concentrations of Democratic voters in the State. It also fell victim to one of the most egregious examples of cracking in the 2016 Plan.

As shown in the image below, the 2016 Plan splits Greensboro—and Guilford County—and subsumes each half within a much larger concentration of Republican voters. The southwestern half of Guilford County is now part of District 13 and the other half belongs to District 6, cracking that causes both districts to be safe Republican seats. As noted previously, the map also separates the Democratic voters in both of these districts from Forsyth County's Democratic voters in District 5.



Esselstyn Decl. at 8.

In cracking Greensboro's Democratic voters, Legislative Defendants split the campus of North Carolina A&T State University, which is the largest historically black university in the country. The district boundary cuts straight through the campus, placing the west side of campus in District 13 and the east side of campus in District 6, as shown below:



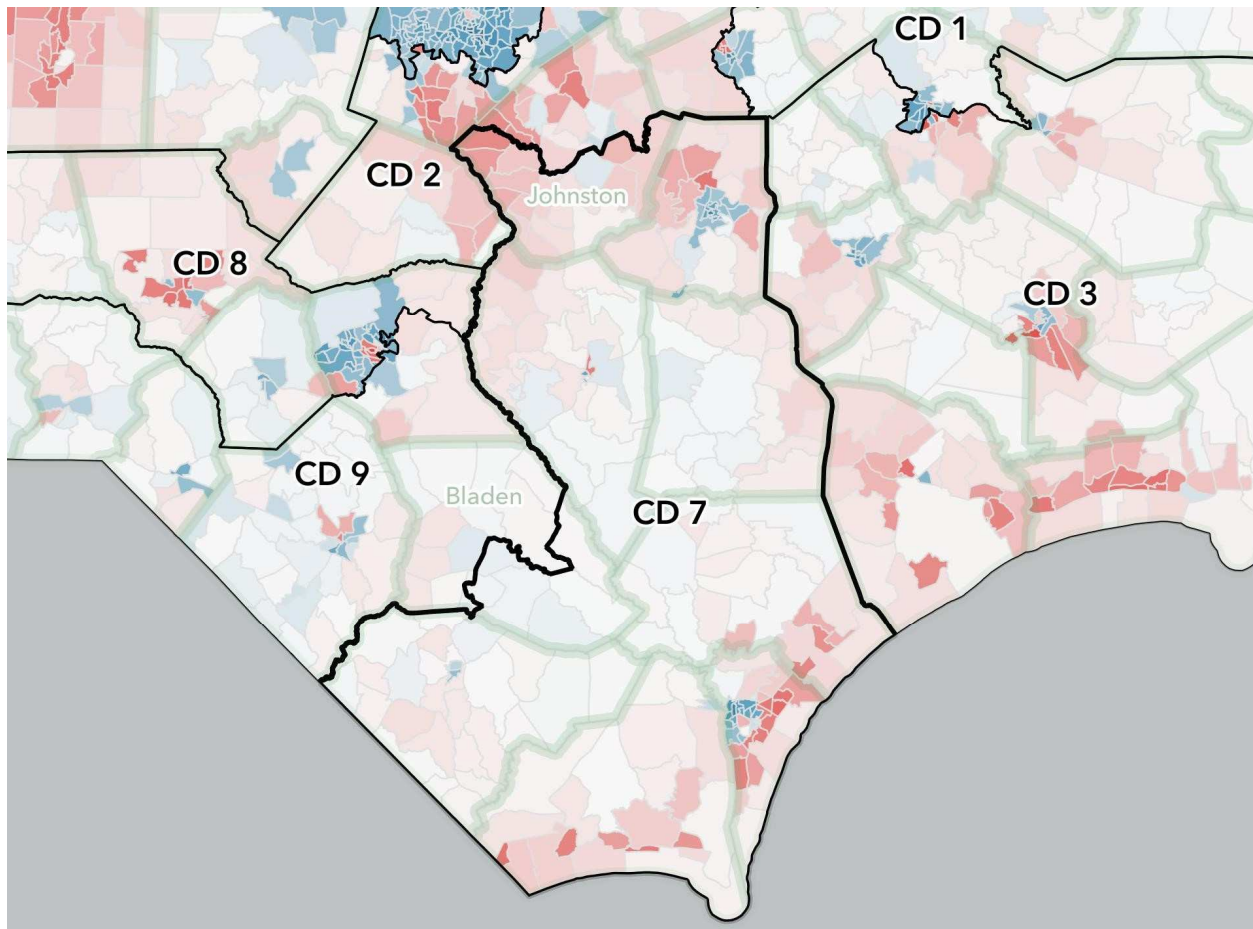
Esselstyn Decl. at 16.

As a result of this cracking, the Republican candidate has won District 6 by comfortable margins, with 59.2% and 56.5% of the vote in 2016 and 2018, respectively.

Congressional District 7

The 2016 Plan cracks Democratic voters in District 7. As already explained, at the north end of District 7, the map cracks Johnston County's Democratic voters between Districts 7 and

2. Likewise, on the west side of District 7, the map cracks Democratic voters in Bladen County, splitting the most heavily Democratic VTDs between Districts 7 and 9.



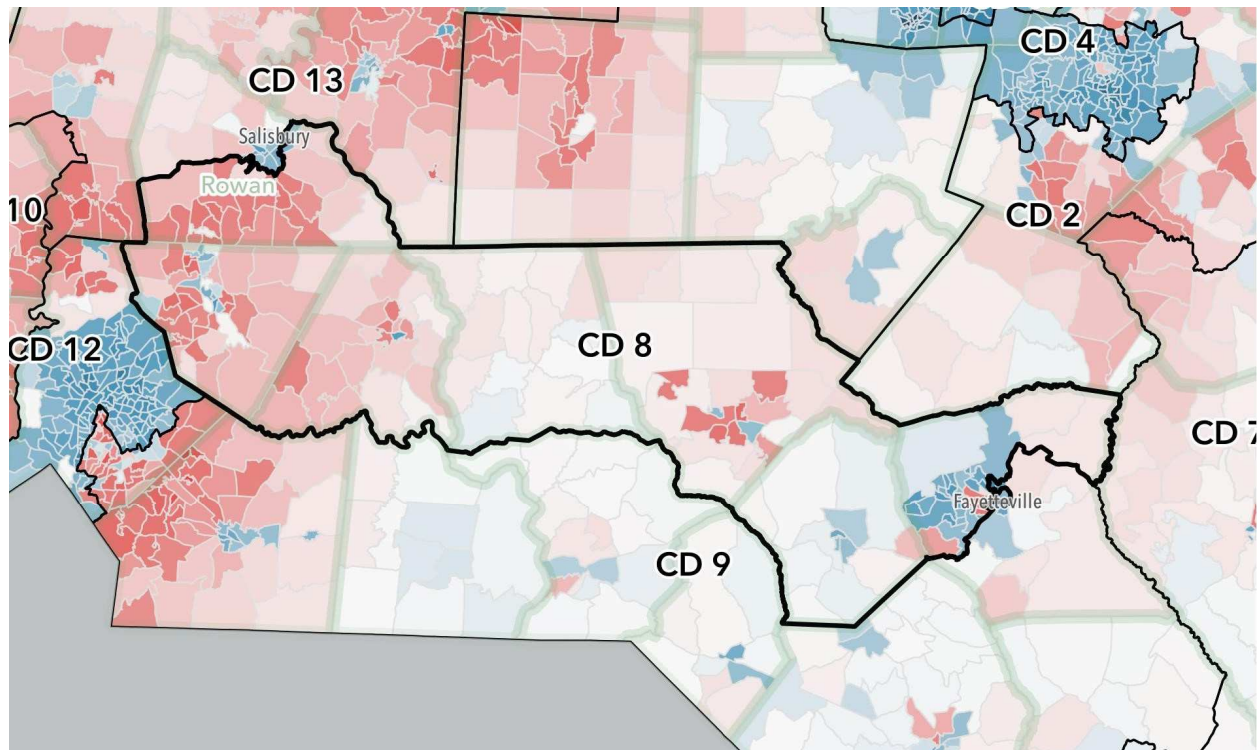
Esselstyn Decl. at 9.

As a result of this cracking, District 7 has remained a safe Republican seat. The Republican candidate won District 7 with 60.9% and 56.5% of the vote in 2016 and 2018, respectively.

Congressional District 8

Fayetteville is North Carolina's sixth most-populous city and is heavily Democratic. The 2016 Plan cracks Fayetteville's Democratic voters nearly down the middle, placing one group in District 8 and the other in District 9. District 8 then slices to the west, picking up Republican

voters in county after county until stopping halfway through Rowan County, right before the district would hit the Democratic voters of Salisbury, who are carefully excluded from District 8 and placed into District 13 instead.



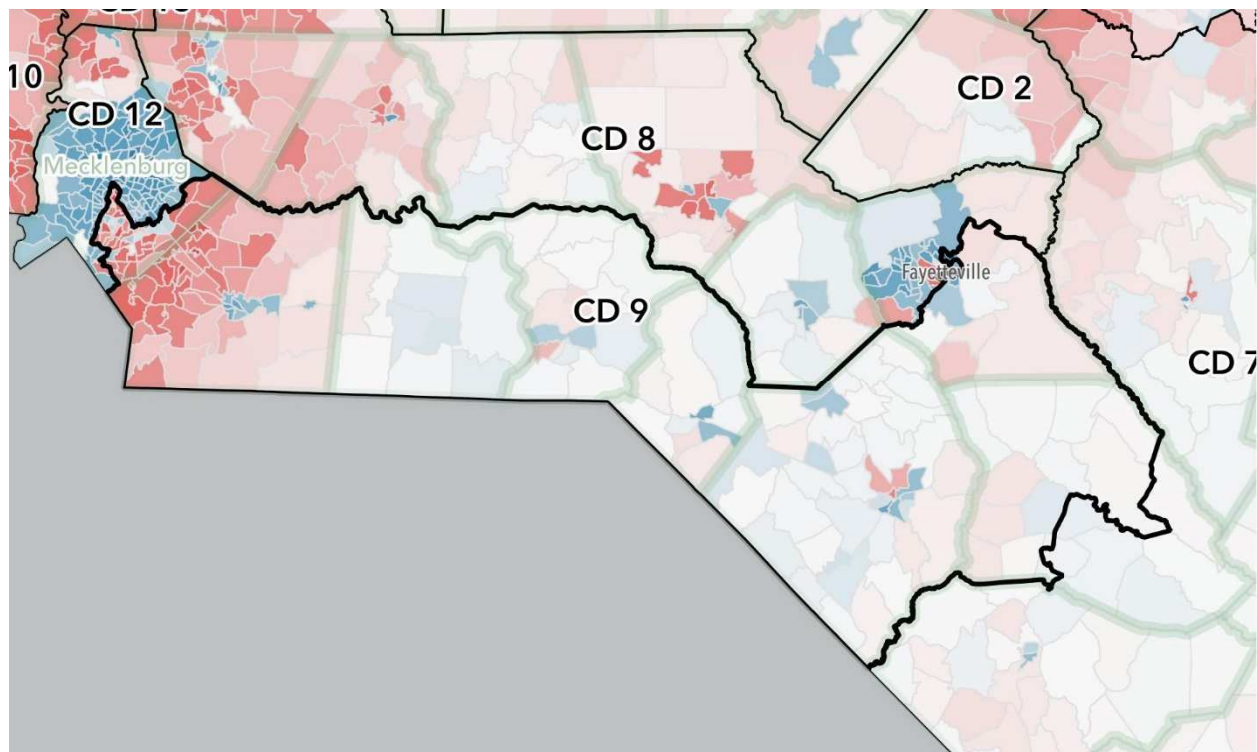
Esselstyn Decl. at 10.

As a result of this cracking, District 8 has remained a safe Republican seat. The Republican candidate won District 8 with 58.8% and 55.3% of the vote in 2016 and 2018, respectively.

Congressional District 9

District 9 is a near mirror image of District 8. District 9 contains the other half of Fayetteville’s Democratic voters and then, like District 8, stretches west to pick up Republican voters. District 9 reaches into Mecklenburg County and picks up the “pizza slice” in Mecklenburg County that contains the county’s most Republican-leaning VTDs. District 9’s

boundaries carefully exclude virtually all of Mecklenburg County's Democratic VTDs, which instead are packed into District 12.

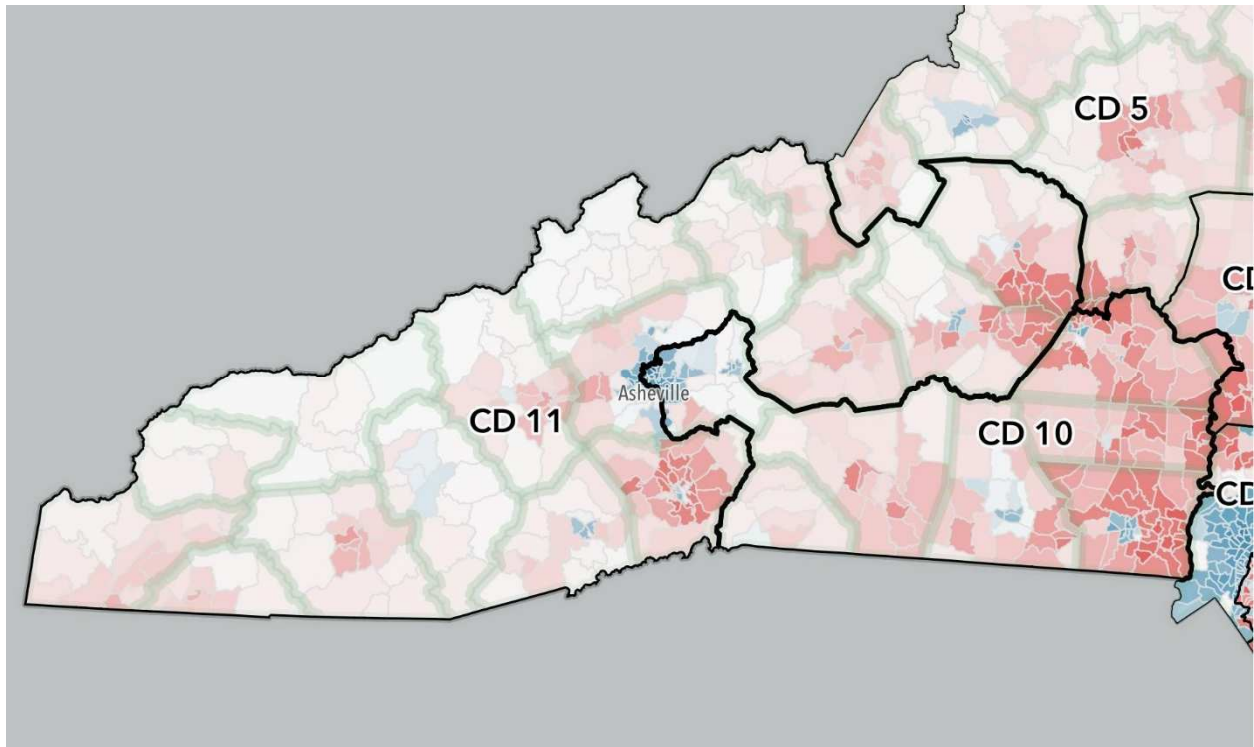


Esselstyn Decl. at 11.

In the elections under the 2016 Plan, District 9 has bent but not broken, remaining a Republican seat. Even the fact that District 9's 2018 Republican candidate was involved in a high-profile election-fraud scandal that resulted in the invalidation of the 2018 election results for the district could not counterbalance the extreme gerrymander. The Republican candidate won the September 2019 special election in District 9 with 51% of the vote.

Congressional Districts 10 and 11

The 2016 Plan egregiously cracks Asheville's Democratic voters between Districts 10 and 11 to create two safe Republican seats. This cracking dilutes the voting power of Asheville's Democratic voters and ensures that they cannot elect a candidate of their choice.



Esselstyn Decl. at 12-13.

The boundary between Districts 10 and 11 splits the campus of UNC Asheville in two, even going so far as to place students living on different sides of the same residential dormitory into different congressional districts, as shown in the image below:⁶



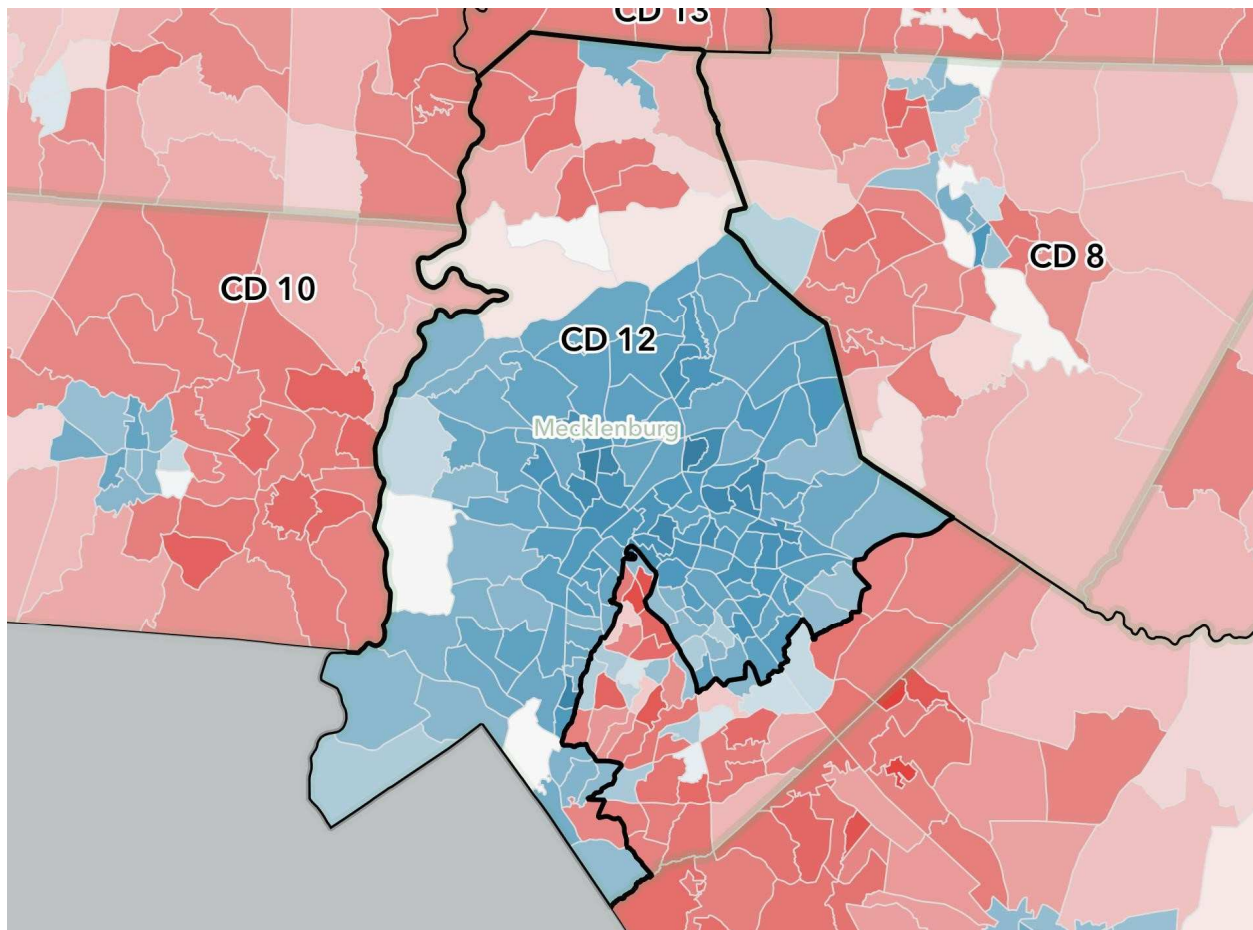
⁶ See *Two UNC Asheville Dorms Are Bisected by Gerrymandered District Boundaries*, Districks (Oct. 26, 2018), <https://blog.districks.com/2018/10/26/two-unc-asheville-dorms-are-bisected-by-gerrymandered-district-lines/>.

Esselstyn Decl. at 17.

The cracking of Asheville's Democratic voters has been successful. The Republican candidates in Districts 10 and 11 won both seats with between 58% and 63% of the vote in the 2016 and 2018 elections.

Congressional District 12

District 12 is another packed Democratic district. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 12 to be “predominantly Democratic.” Hofeller Dep. 192:7-16. District 12 packs all of Mecklenburg County's most Democratic VTDs, carefully excluding the Republican-leaning “pizza slice” in the southern part of Mecklenburg County to ensure that District 12 is an overwhelmingly Democratic district.

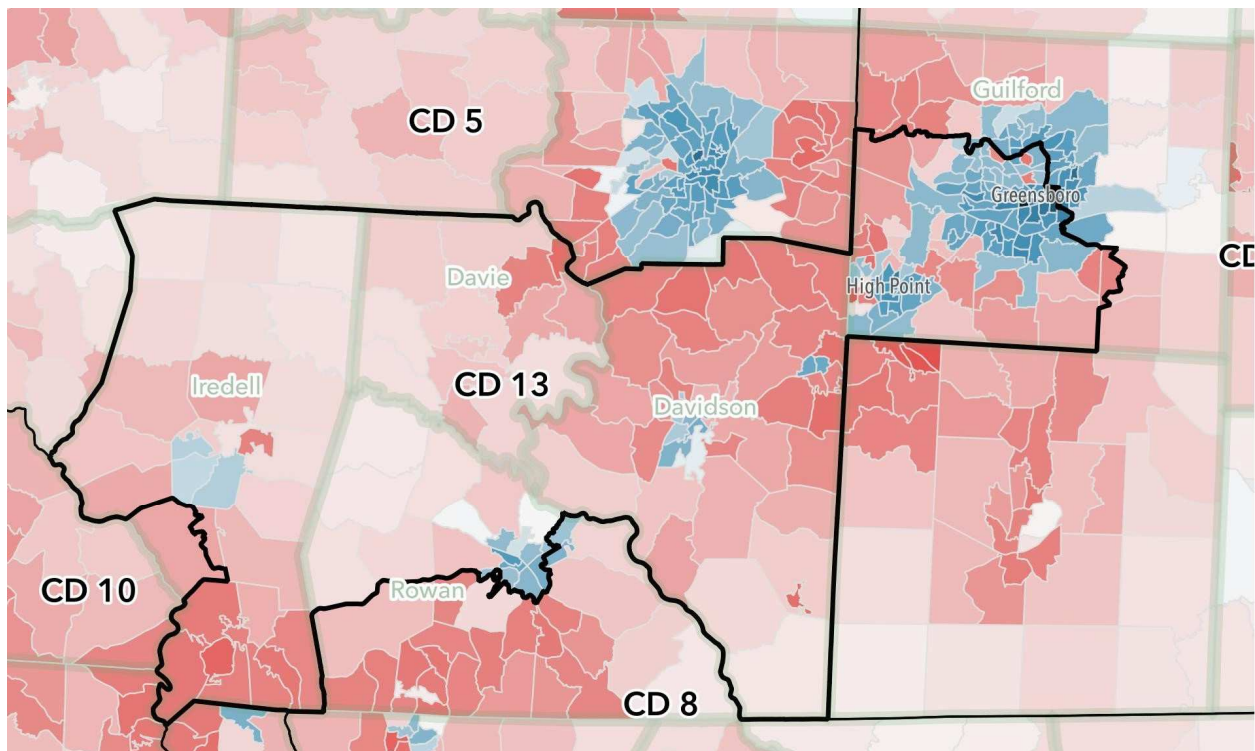


Esselstyn Decl. at 14.

As a result of this packing, the Democratic candidate won District 12 with 67.0% and 73.1% of the vote in 2016 and 2018, respectively.

Congressional District 13

District 13 contains the other cracked half of Guilford County. District 13 is a dog-shaped district that groups Guilford County's heavily Democratic voters in and around Greensboro and High Point with overwhelmingly Republican areas in Davidson, Davie, Rowan, and Iredell Counties, ensuring that Guilford County's Democratic voters cannot elect a Democrat.



Esselstyn Decl. at 15.

The Republican candidate won District 13 in 2016 and 2018 with 56.1% and 53.1% of the vote, respectively.

E. The U.S. Supreme Court Holds that Partisan Gerrymandering Claims Are Left to State Courts Applying State Constitutions

In August 2016, the North Carolina Democratic Party, Common Cause, and more than a dozen individual North Carolina voters sued Representative Lewis, Senator Rucho, and other state defendants in federal court, asserting that the 2016 Plan was a partisan gerrymander in violation of the *federal* constitution. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019).

After a four-day trial, a three-judge federal district court unanimously concluded that the General Assembly “drew and enacted the 2016 Plan with intent to subordinate the interests of non-Republican voters and entrench Republican control of North Carolina’s congressional delegation.” *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 672 (M.D.N.C. 2018). The court further found that “the 2016 Plan achieved the General Assembly’s discriminatory partisan objective.” *Id.* The court therefore held the 2016 Plan violated the Fourteenth Amendment’s Equal Protection Clause and Article I of the U.S. Constitution. The court further held, with one dissenter, that the 2016 Plan also violated the First Amendment. *Id.* at 683.

The U.S. Supreme Court reversed, holding that partisan gerrymandering claims are not justiciable under the *federal* constitution. *Rucho*, 139 S. Ct. at 2506-07. Nonetheless, the Court observed that partisan gerrymanders like the 2016 Plan are “incompatible with democratic principles.” *Id.* And, of particular relevance here, the Court recognized that the 2016 Plan is “highly partisan, by any measure,” and a “blatant example[] of partisanship driving districting decisions.” *Id.* at 2491, 2505. Despite holding that “partisan gerrymandering claims present political questions beyond the reach of the *federal* courts,” the Court made clear that it “does not condone excessive partisan gerrymandering[,] [n]or does [its] conclusion condemn complaints about districting to echo into a void.” *Id.* at 2507 (emphasis added).

Instead, the U.S. Supreme Court noted that “[t]he States ... are actively addressing the issue on a number of fronts” under state constitutional provisions. *See id.* The Court made clear that “[p]rovisions in state statutes and *state constitutions* can provide standards and guidance for *state courts* to apply.” *Id.* (emphases added).

F. A Three-Judge Panel of the Superior Court Strikes Down North Carolina’s State Legislative Maps Under the North Carolina Constitution

On September 3, 2019, a three-judge panel of this Court unanimously invalidated North Carolina’s 2017 state House and Senate plans under the North Carolina Constitution. *See Common Cause*, slip op. at 10. The Court found that the 2017 state legislative plans “do not permit voters to freely choose their representative, but rather representatives are choosing voters based upon sophisticated partisan sorting.” *Id.*

The Court determined that the plaintiffs had standing to challenge the state legislative maps, and that their challenges were justiciable under the North Carolina Constitution. *Id.* at 292-98, 331-41. And, on the merits, the Court held that the state legislative maps were partisan gerrymanders that violated the North Carolina Constitution’s Free Elections Clause, art. I, § 10, Equal Protection Clause, art. I, § 19, and Freedom of Speech and Assembly Clauses, art. I, §§ 12, 14. *See Common Cause*, slip op. at 7-10.

The *Common Cause* Court explained that North Carolina’s 2017 state legislative plans and the 2016 Congressional Plan “arose in remarkably similar circumstances.” *Id.* at COL ¶ 18. “[B]oth the 2016 Congressional map and the 2017 legislative maps were required after a federal court declared existing maps unconstitutional; both were drawn under the direction of many of the same actors working on behalf of the Republican-controlled General Assembly; both were drawn by Dr. Thomas Hofeller; both were drawn in large part before the General Assembly’s redistricting committee met and approved redistricting criteria; and *both ... were drawn with the*

intent to maximize partisan advantage and, in fact, achieved their intended partisan effects.” Id. (emphasis added).

G. The 2016 Plan Harms Plaintiffs and Other Democratic Voters

Plaintiffs in this action are North Carolina voters from each of the State’s 13 congressional districts. Each Plaintiff consistently votes for Democratic congressional candidates. *See* Verified Compl. ¶¶ 6-19. The 2016 Plan harms Plaintiffs and other Democratic voters in North Carolina by packing and cracking them to reduce their electoral influence.

Plaintiffs Amy Clare Oseroff, John Balla, and Virginia Walters Brien reside in Districts 1, 4, and 12, respectively. *See* Verified Compl. ¶¶ 6, 9, 18. The 2016 Plan dilutes the voting power of these Plaintiffs and other Democratic voters by packing Democratic voters into these three districts. *See* Hofeller Dep. at 126:14-25, 127:1-3, 127:23-25, 128:1-6, 128:17-129:2, 192:7-16. The 2016 Plan places the remaining Plaintiffs—Rebecca Harper, Donald Rumph, Richard R. Crews, Lily Nicole Quick, Gettys Cohen, Jr., Shawn Rush, Jackson Thomas Dunn, Jr., Mark S. Peters, Joseph Thomas Gates, Kathleen Barnes, and David Dwight Brown—into ten cracked districts. *See* Verified Compl. ¶¶ 6-19. The 2016 Plan fractures Democratic voters across those ten districts to ensure that each district will remain reliably Republican. *See* Hofeller Dep. at 126:14-25, 127:1-3, 128:1-6, 128:17-129:2, 192:7-16.

Expert analysis by Plaintiffs’ expert Dr. Jowei Chen illustrates the harm to each Plaintiff. Dr. Chen created computer simulations for North Carolina’s congressional districts in *Rucho* that, like the simulations he created in *Common Cause*, strictly adhere to the nonpartisan traditional redistricting criteria within the 2016 Adopted Criteria. *See* Decl. of Dr. Jowei Chen (“Chen Decl.”) ¶¶ 7-10. As in *Common Cause*, Dr. Chen created one congressional simulation set that ignores incumbency and another set that avoids pairing the incumbents in office in 2016 when the 2016 Plan was drawn. *Id.* Using these simulations, which were previously produced to

Legislative Defendants in the federal partisan gerrymandering case, Dr. Chen has identified the extent to which each Plaintiff in the instant case lives in a congressional district that is a partisan outlier relative to the district in which he or she would live under neutral maps. Dr. Chen has conducted this analysis using two different partisanship measures: and (1) the elections specified in the 2016 Adopted Criteria, which are all statewide elections from 2008 to 2014 except for the two presidential elections; and (2) Dr. Hofeller’s seven-elections formula. *Id.* ¶¶ 12-14.

Dr. Chen finds that nine Plaintiffs who currently live in Republican-leaning districts would live in a more Democratic district in at least 91% of the 1,000 Simulation Set 1 plans (Cohen, Quick, Rumph, Dunn, Barnes, Peters, Gates, Brown, and Harper). *See* Chen Decl. ¶ 17, Figures 1-2. Dr. Chen finds that the remaining five Plaintiffs would live in a less Democratic district in at least 86% of his Simulation Set 1 plans (Rush, Balla, Brien, Oseroff, Crews), and three of these five Plaintiffs are extreme outliers above the 98% level. *Id.* Dr. Chen finds largely similar results using his Simulation Set 2. *Id.* ¶ 17, Figures 3-4.

ARGUMENT

I. Legal Standard

A preliminary injunction should issue if (1) the plaintiff can “show likelihood of success on the merits of his case,” (2) the plaintiff “is likely to sustain irreparable loss unless the injunction is issued,” and (3) a “balancing of the equities” supports injunctive relief. *Triangle Leasing Co. v. McMahon*, 327 N.C. 224, 227, 393 S.E.2d 854, 856-57 (1990); *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983).

These standards apply because Plaintiffs seek a prohibitory preliminary injunction, namely “to restrain the defendant[s]” from using the 2016 Plan in administering the 2020 congressional elections. *Anderson v. Town of Waynesville*, 203 N.C. 37, 164 S.E. 583, 588 (1932). Plaintiffs seek to prevent Defendants from “permitting [the 2016 Plan] to operate.” *Id.*

In remanding *Common Cause v. Lewis* to state court, the federal district court confirmed that suits seeking to bar use of unconstitutional redistricting plans do not call for “an injunction compelling the Legislative Defendants to act.” *Common Cause v. Lewis*, 358 F. Supp. 3d 505, 511 (E.D.N.C. 2019). Instead, such complaints seek to enjoin defendants *from* acting. *Id.*

Plaintiffs thus do not seek to require Defendants to “perform a positive act,” the trigger for a “mandatory” preliminary injunction. *Auto. Dealer Res., Inc. v. Occidental Life Ins. Co. of N.C.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972); *see also Bd. of Light & Water Comm’rs of Concord v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 424, 271 S.E.2d 402, 404 (1980) (similar). But even if the heightened standard for mandatory injunctions applied, it is satisfied here because Plaintiffs’ injuries are “immediate, pressing, irreparable, and clearly established.” *Auto. Dealer Res.*, 15 N.C. App. at 639, 190 S.E.2d at 732. “[T]here is no doubt that the court has jurisdiction to issue a preliminary mandatory injunction where the case is urgent and the right is clear; and, if necessary to meet the exigencies of a particular situation, the injunctive decree may be both preventive and mandatory.” *Id.* (quotation marks omitted); *see also Roberts v. Madison Cty. Realtors Ass’n, Inc.*, 344 N.C. 394, 400, 474 S.E.2d 783, 788 (1996) (recognizing availability of mandatory preliminary injunctions).

The relevant facts are admitted by Legislative Defendants and are already a matter of public record. This Court confirmed the governing legal principles just weeks ago in *Common Cause v. Lewis*, which Defendants have not appealed. And administrative deadlines for the 2020 elections are fast approaching. If ever there were an instance where “the case is urgent and the right is clear,” *Auto. Dealer Res.*, 15 N.C. App. at 639, 190 S.E.2d at 732, it is this one.

II. Plaintiffs Are Likely To Succeed on the Merits of their Claims that the 2016 Plan Violates the North Carolina Constitution

Plaintiffs are all but certain to succeed on their claims in this case. Under the principles announced in *Common Cause v. Lewis*, the 2016 Plan plainly violates the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. And all Plaintiffs have standing to sue.

A. The 2016 Plan Violates North Carolina’s Free Elections Clause

The Free Elections Clause of the North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const., art. I, § 10. “The Free Elections Clause, Article I, § 10, is one of the clauses that makes the North Carolina Constitution more detailed and specific than the federal Constitution in the protection of the rights of its citizens.” *Common Cause*, slip op. COL ¶ 24. “The federal Constitution contains no similar counterpart.” *Id.*; see *Rucho*, 139 S. Ct. at 2507.

Since its original adoption in 1776, North Carolina has twice “broadened and strengthened” the Free Elections Clause, first to expand its reach from state legislative elections to all elections, and second to add mandatory language to “make it clear that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights are commands and not mere admonition.” *Common Cause*, slip op. COL ¶ 43 (internal quotation marks omitted).

In *Common Cause*, this Court held that “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* ¶ 31. “This ... is a fundamental right of the citizens enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Id.*

As the *Common Cause* Court held, “partisan gerrymandering ... strikes at the heart of the Free Elections Clause.” *Id.* ¶ 45. “[E]xtreme partisan gerrymandering,” the Court explained, “is

contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* ¶ 36. “Extreme partisan gerrymandering does not fairly and truthfully ascertain the will of the people” because “[v]oters are not freely choosing their representatives.” *Id.* ¶ 36. “Rather, representatives are choosing their voters.” *Id.* “It is not the will of the people that is fairly ascertained through extreme partisan gerrymandering” but instead “the will of the map drawer that prevails.” *Id.* ¶ 37. Applying these principles, the Court struck down the 2017 state House and Senate plans as partisan gerrymanders that violated the Free Elections Clause.

The 2016 Congressional Plan violates the Free Elections Clause even more flagrantly than the invalidated 2017 state legislative plans. The 2016 Adopted Criteria on their face violate the Free Elections Clause. The General Assembly adopted “Partisan Advantage” and “Political Data” as official criteria for the creation of the 2016 Plan, explicitly instructing the mapmaker, Dr. Hofeller, to “make reasonable efforts to construct districts in the [2016 Plan] to maintain the current [10-3] partisan makeup of North Carolina’s congressional delegation.” Adopted Criteria. Thus, the 2016 Plan explicitly and unambiguously sought “to predetermine election outcomes” across the state as a whole and in “specific districts.” *Common Cause*, slip op. COL ¶ 47.

Legislative Defendants and Dr. Hofeller confirmed—on the record in legislative hearings and in sworn deposition testimony—that the 2016 Plan was “specifically and systematically design[ed] ... for partisan purposes and a desire to preserve power,” which this Court held violates the Free Elections Clause. *Id.* Representative Lewis “acknowledge[d] freely” that the 2016 Plan “would be a political gerrymander.” Feb. 16 Joint Comm. Tr. at 48:4-5. He stated: “I want to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map.” *Id.* at 53:24-54:4. And he left no room for doubt that, as

with the invalidated 2017 state legislative plans, Legislative Defendants were seeking partisan advantage “to the greatest extent possible.” *Common Cause*, slip op. COL ¶ 46. Representative Lewis said that the 2016 Plan sought a 10-3 Republican advantage only because he “did not believe it would be possible to draw a map with 11 Republicans and 2 Democrats.” Feb. 16 Joint Comm. Tr. at 50:6-10. Senator Rucho agreed that the map was drawn to be 10-3 because 10-3 “was doable” but 11-2 “is not.” Rucho Dep. at 121:10-122:2.

Dr. Hofeller admitted that he followed the Adopted Criteria’s directive and drew the district lines to predetermine a 10-3 Republican advantage. Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2. Specifically, he packed Democratic voters into Districts 1, 4, and 12, and cracked the remaining Democratic voters across the other 10 districts. *See* Hofeller Dep. at 127:14-129:2, 192:10-16. He did this by color-coding every VTD on the basis of partisanship and assigning VTDs to districts based on their partisan performance. *See* Hofeller Dep. at 132:14-18, 212:16-215:7; Hofeller Dep. II at 260:18-267:17, 269:7-9, 271:11-273:3, 274:1-16, 281:7-11, 282:1-7. His formula predicted a 10-3 Republican advantage. Hofeller Decl. at 9.

Legislative Defendants have successfully “predetermine[d] election outcomes,” just as they intended. *Common Cause*, slip op. COL ¶ 47. Even though the 2016 and 2018 elections were very different electoral environments, Republicans won 10 of 13 seats in both elections. Republicans won 10 of 13 seats in the blue wave year of 2018 even though Democrats received a *majority* of the two-party statewide vote after adjusting for the one uncontested race. *See* 2016 Results; 2018 Results. The district-level results from 2018 show how the 2016 Plan withstood this blue wave; Republicans had enough cushion in the ten cracked districts to withstand a swing in the Democrats’ direction, while Democrats only added to their already huge majorities in the three packed districts. *See id.* Just like the invalidated 2017 state legislative plans, the 2016

Congressional Plan makes it “nearly impossible for the will of the people—should that will be contrary to the will of the partisan actors drawing the maps—to be expressed through their votes.” *Common Cause*, slip op. COL ¶ 46.

While Dr. Chen and Dr. Mattingly presented copious expert analysis in *Rucho* demonstrating that the 2016 Plan is an extreme outlier that has cost Democrats several seats, this Court need not rely on such expert analysis to reach the same conclusion here. There is certainly no need for such expert analysis in order to conclude that Plaintiffs are *likely* to prevail on the merits, the standard for a preliminary injunction. Given the official legislative criteria mandating a 10-3 “Partisan Advantage” through the use of “Political Data,” as well as Legislative Defendants’ and Dr. Hofeller’s admissions and the 2016 and 2018 election outcomes, there is no conceivable factual or legal defense of the 2016 Plan. It manipulates North Carolina’s congressional elections for partisan gain, in violation of the Free Elections Clause.

B. The 2016 Plan Violates North Carolina’s Equal Protection Clause

The North Carolina Constitution’s Equal Protection Clause declares that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. This clause provides greater protection for voting rights than its federal counterpart. *Common Cause*, slip op. COL ¶¶ 52-57. Specifically, North Carolina’s Equal Protection Clause protects “the fundamental right of each North Carolinian to substantially equal voting power.” *Stephenson v. Bartlett*, 355 N.C. 354, 3379, 562 S.E.2d 377, 394 (2002). “It is well settled in this State that ‘the right to vote on equal terms is a fundamental right.’” *Id.* at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356). “These principles apply with full force in the redistricting context.” *Common Cause*, slip op. COL ¶ 53. In *Common Cause*, this Court held that extreme partisan gerrymandering infringes upon this “fundamental right,” because “the intentional classification of voters’ based on partisanship in order to pack and crack them into districts is an

impermissible distinction among similarly situated citizens aimed at denying equal voting power.” *Id.* ¶¶ 53, 63 (internal quotation marks omitted).

In evaluating whether an alleged partisan gerrymander violates North Carolina’s Equal Protection Clause, this Court applies a three-part test. *Id.* ¶ 58. “First, the plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing district lines was to entrench their party in power by diluting the votes of citizens favoring their rival.” *Id.* (quotation marks and brackets omitted). “Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes.” *Id.* (quotation marks omitted). “Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map.” *Id.* The 2016 Plan easily satisfies each prong.

First, entrenching Republicans in power was not just the General Assembly’s “predominant purpose” in drawing the 2016 Plan—it was the express, overriding goal. The U.S. Supreme Court described the 2016 Plan as a “blatant example[] of partisanship driving districting decisions.” *Rucho*, 139 S. Ct. at 2505. As set forth extensively above, the official written criteria as well as the admissions by Dr. Hofeller and Legislative Defendants conclusively establish that Legislative Defendants’ predominant purpose was to gerrymander the 2016 Plan to entrench Republicans’ 10-3 advantage. The Adopted Criteria expressly subordinated traditional nonpartisan redistricting criteria to “political impact,” meaning Republican partisan advantage. *See* Adopted Criteria. And Dr. Hofeller did not even calculate the compactness of the 2016 Plan before it was enacted. Hofeller Dep. at 216:8-21.

Second, the 2016 Plan has had its “intended effect” of diluting the votes of Plaintiffs and other Democratic voters, depriving them of substantially equal voting power and the right to vote

on equal terms. *Common Cause*, slip op. COL ¶ 58. The *Common Cause* Court noted that the 2016 Plan, like the invalidated 2017 state legislative plans, was “drawn with the intent to maximize partisan advantage and, in fact, *achieved [its] intended partisan effects.*” *Id.* ¶ 18 (emphasis added). As detailed above, the 2016 and 2018 election results confirm that Legislative Defendants succeeded in their goal of creating a 10-3 map. *See* 2016 Results; 2018 Results. The 2016 Plan achieves this result by “packing and cracking Democratic voters” across the 13 districts, just like the 2017 state legislative plans struck down under the Equal Protection Clause in *Common Cause*. *See Common Cause*, slip op. COL ¶ 70. As under those 2017 state legislative plans, the margins of victory under the 2016 Plan—and not just the seat counts—confirm the vote dilution. Democrats won their three districts with between 69.9% and 75.1% of the vote, while Republicans never exceeded 60.4% in the then Republican districts. “This packing and cracking diminishes the ‘voting power’ of Democratic voters” in all 13 of these districts. *Common Cause*, slip op. COL ¶ 70. The votes of Democratic voters in the three packed districts “are substantially less likely to ultimately matter in deciding the election results” when compared to Republican voters in the ten cracked districts. *Id.*

The 2016 Plan “not only deprive[s] Democratic voters of equal voting power in terms of electoral outcomes, but also deprive[s] them of substantially equal legislative representation.” *Common Cause*, slip op. COL ¶ 71. “When a district is created solely to effectuate the interests of one group”—as Legislative Defendants have admitted the districts in the 2016 Plan are—“the elected official from that district is more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole.” *Id.* (internal quotation marks omitted).

Dr. Chen’s analysis in this case independently confirms that the 2016 Plan deprives Plaintiffs of substantially equal voting power and the right to vote on equal terms. Dr. Chen concluded that nine Plaintiffs who are currently in Republican districts would be in Democratic leaning or more competitive districts under a map that was not drawn to maximize Republican advantage, but instead was drawn using traditional nonpartisan criteria. Chen Decl. ¶ 17.

Finally, there is no legitimate, nonpartisan justification for the 2016 Plan’s extreme partisan bias. In *Common Cause*, Legislative Defendants offered only “limited neutral justifications for the enacted [state legislative] maps,” arguing that those maps satisfied certain traditional redistricting criteria, such as equal population, county grouping and traversal rules, compactness, minimizing VTD splits, and protecting incumbents. *Common Cause*, slip op. COL ¶ 74. But Legislative Defendants failed to show that these neutral criteria rather than predominantly partisan intent could actually explain the maps’ “discriminatory effects.” *Id.* ¶ 76. Here, given Legislative Defendants’ and Dr. Hofeller’s admissions about the 2016 congressional redistricting process, Legislative Defendants cannot conceivably show that the 2016 Plan is narrowly tailored to achieve a compelling government interest. Indeed, Legislative Defendants’ own criteria *permitted* the subversion of neutral criteria for partisan ends.

In short, it is clear that, in drawing the 2016 Plan, Legislative Defendants engaged in the “intentional ‘classification of voters’ based on partisanship in order to pack and crack them into districts” and to “deprive [them] of the right to vote on equal terms.” *Common Cause*, slip op. COL ¶¶ 63, 66. Plaintiffs are likely to succeed on their Equal Protection Clause claim.

C. The 2016 Plan Violates North Carolina’s Freedom of Speech and Assembly Clauses

The 2016 Plan burdens protected expression and association by making Democratic votes less effective and by preventing Democratic voters from assembling together and instructing

their representatives. Because Defendants cannot establish that the 2016 Plan was narrowly tailored to achieve a compelling government interest, it fails strict scrutiny.

1. The 2016 Plan Unconstitutionally Discriminates Against Protected Expression and Association

The North Carolina Constitution’s Freedom of Speech Clause provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” N.C. Const., art. I, § 14. The Freedom of Assembly Clause provides in relevant part that “[t]he people have a right to assemble together for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” *Id.* § 12. These clauses provide greater protection for speech and association than their federal counterparts. *Common Cause*, slip op. COL ¶¶ 82-85.

In *Common Cause*, this Court held that “[v]oting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by” these clauses. *Id.* ¶ 86. “Voting provides citizens a direct means of expressing support for a candidate and his views,” and “is no less protected ‘merely because it involved the act’ of casting a ballot.” *Id.* ¶¶ 87-88 (quoting *State v. Bishop*, 368 N.C. 869, 874, 787 S.E.2d 814, 818 (2016)). Similarly, “[c]itizens form political parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Id.* ¶ 90 (quoting *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011)). “[B]anding together with likeminded citizens in a political party” thus “is a form of protected association.” *Id.* Both of those holdings apply in the context of congressional elections just as they did in the context of state legislative elections in *Common Cause*.

a. A districting plan is subject to strict scrutiny where it burdens protected expression based on viewpoint by discriminatorily making the votes cast for one party’s

candidates less effective. “The guarantee of free expression ‘stands against attempts to disfavor certain subjects or viewpoints.’” *Id.* ¶ 93 (quoting *Citizens United v. FEC*, 558 U.S. 310, 340 (2010)). Here, Representative Lewis freely admitted that the 2016 Plan was drawn to disfavor the viewpoints of Democratic voters. According to Representative Lewis himself, the district lines were drawn to advantage Republicans *because* Representative Lewis “think[s] electing Republicans is better” “for the country” “than electing Democrats.” Feb. 19 House Floor Tr. at 34:21-23.

The 2016 Plan has exactly the same features that led the *Common Cause* Court to conclude that the 2017 state legislative plans violated the Freedom of Speech Clause. Here too, the mapmaker “analyzed the voting histories of every VTD in North Carolina, identified VTDs that favor Democratic candidates, and then singled out the voters in those VTDs for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Common Cause*, slip op. COL ¶ 95; *see also* ¶ 101 (similar). Dr. Hofeller admitted that he did exactly this in drawing the 2016 Plan, at Legislative Defendants’ direction. Hofeller Dep. at 127:14-129:2, 132:14-18, 175:19-23, 178:14-20, 188:19-190:2, 192:10-16, 212:16-215:7; Hofeller Dep. II at 260:18-267:17, 269:7-9, 271:11-273:3, 274:1-16, 281:7-11, 282:1-7.

While a plan “need not explicitly mention any particular viewpoint to be impermissibly discriminatory,” *Common Cause*, slip op. COL ¶ 99, the 2016 Plan does explicitly announce an intent to burden a particular viewpoint. Legislative Defendants adopted an explicit written policy of seeking “Partisan Advantage” to favor one political viewpoint. *See Adopted Criteria.*

As in *Common Cause*, it “changes nothing” that “Democratic voters can still cast ballots under gerrymandered maps.” *Common Cause*, slip op. COL ¶ 96. “The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* Like the invalidated 2017 state legislative plans, the 2016 Plan’s “sorting of Plaintiffs and other Democratic voters based on disfavor for their political views has burdened their speech by making their votes less effective.” *Id.* ¶ 102. “Plaintiffs and other Democratic voters live in districts where their votes are guaranteed to be less effective—either because the districts are packed such that Democratic candidates will win by astronomical margins or because the Democratic voters are cracked into seats that are safely Republican.” *Id.* Dr. Hofeller’s own analysis of projected vote margins under the 2016 Plan using his partisanship formula shows this to be true. *See* Hofeller Decl. at 9 (concluding that 2016 Plan has three packed Democratic districts where Democrats have at least 63% of the vote, and ten districts that Republicans win with 53% to 58% of the vote).

b. The 2016 Plan independently violates Article I, § 12 by burdening the ability of Democratic voters to associate effectively. The *Common Cause* Court held that a districting plan is subject to strict scrutiny where it burdens disfavored association by restricting “the ability of like-minded people across the State to affiliate in a political party and carry out [their] activities and objects.” *Common Cause*, slip op. COL ¶ 107 (internal quotation marks omitted). The Court concluded that under the 2017 state legislative plans, “Democratic voters who live in cracked districts have little to no ability to instruct their representatives or obtain redress from their representatives on issues important to those voters.” *Id.* The same is true under the 2016 Plan. The 2016 Plan places Democrats in ten cracked districts that diminish their voting strength. The Democratic voters in these cracked districts have virtually no chance of

successfully banding together to elect a candidate of their choice, and their Republican representatives have little incentive to consider the views of Democratic constituents.

c. The 2016 Plan fails strict scrutiny—and indeed any scrutiny. “Discriminating against citizens based on their political beliefs does not serve any legitimate government interest.” *Common Cause*, slip op. COL ¶ 111. “Blatant examples of partisanship driving districting decisions are unrelated to any legitimate legislative objective.” *Id.* ¶ 61 (internal quotation marks omitted). *Id.* ¶ 61. “[P]artisan gerrymanders are incompatible with democratic principles” and are “contrary to the compelling governmental interests established by the North Carolina Constitution ‘in having fair, honest elections,’ where the ‘will of the people’ is ascertained ‘fairly and truthfully.’” *Id.* ¶¶ 61-68 (quoting *Petersilie*, 334 N.C. at 182, 432 S.E.2d at 840, and *Skinner*, 169 N.C. at 415, 86 S.E.2d at 356)).

2. The 2016 Plan Unconstitutionally Retaliates Against Protected Expression and Association

The 2016 Plan independently violates the Freedom of Speech and Assembly Clauses by retaliating against voters based on their protected speech and association. “In addition to forbidding discrimination,” North Carolina’s Freedom of Speech and Assembly Clauses “also bar *retaliation* based on protected speech” or conduct. *Id.* ¶ 112. To prevail on a retaliation theory, a plaintiff must show that “(1) the [challenged plan] take[s] adverse action against them, (2) the [plan] w[as] created with an intent to retaliate against their protected speech or conduct, and (3) the [plan] would not have taken the adverse action but for that retaliatory intent.” *Id.*

Like the 2017 state legislative plans invalidated in *Common Cause*, the 2016 Plan satisfies all three of these requirements. As to adverse action, “[i]n *relative* terms, Democratic voters under the [2016 Plan] are far less able to succeed in electing candidates of their choice than they would be under plans that were not so carefully crafted to dilute their votes. And in

absolute terms, Plaintiffs are significantly foreclosed from succeeding in electing preferred candidates.” *Common Cause*, slip op. COL ¶ 114. As to intent, Dr. Hofeller and Legislative Defendants have acknowledged—and the Adopted Criteria required—that the 2016 Plan “intentionally targeted Democratic voters based on their voting histories.” *Common Cause*, slip op. COL ¶ 115. And as to causation, “[t]he adverse effects described above would not have occurred if Legislative Defendants had not cracked and packed Democratic voters and thereby diluted their votes.” *Common Cause*, slip op. COL ¶ 116. As he did in *Common Cause*, Dr. Chen “compared the districts in which the Individual Plaintiffs currently reside under the enacted plan[] with districts in which they would have resided under each of his simulated plans,” and all “of the Individual Plaintiffs’ actual districts are extreme partisan outliers when compared with their districts under the simulated plans.” *Id.*; see Chen Decl. ¶ 17.

D. All Plaintiffs Have Established a Likelihood of Standing

All fourteen Plaintiffs have established a likelihood of standing to sue in this case. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (internal quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles ... , the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”). “At a minimum, a plaintiff in a North Carolina court has standing to sue when it would have standing to sue in federal court.” *Common Cause*, slip op. COL ¶ 2.

“The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that ‘[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm.’” *Common Cause*, slip op. COL ¶ 3 (quoting *Mangum v. Raleigh Bd. of Adjustment*, 362

N.C. 640, 642, 669 S.E.2d 279, 281 (2008)). The “gist” of standing under North Carolina law involves “whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quotation marks omitted). Although the North Carolina Supreme Court “has declined to set out specific criteria necessary to show standing in every case, the Supreme Court has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Davis*, 811 S.E.2d at 727-28. Moreover, to obtain a preliminary injunction, a plaintiff need only show “a likelihood that plaintiff has standing.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 630 (M.D.N.C. 2016) (internal quotation marks omitted).

Here, as to the second factor, the ongoing remedial process in *Common Cause* demonstrates that this Court is fully capable of remedying partisan gerrymandering. And as to the first, all fourteen Plaintiffs have suffered legally cognizable injuries in the drawing of their individual districts. In *Common Cause*, this Court held that the plaintiffs had standing where they had introduced “district-specific evidence that [they] live in ... districts that are outliers in partisan composition relative to the districts in which they live under Dr. Chen’s nonpartisan simulated plans.” *Common Cause*, slip op. COL ¶ 14.

Here, Dr. Chen has performed precisely the same district-specific analysis that he performed in *Common Cause*. Dr. Chen created computer simulations for North Carolina’s congressional districts in *Rucho* that, like the simulations he created in *Common Cause*, strictly adhere to the nonpartisan traditional redistricting criteria within the 2016 Adopted Criteria. Chen Decl. ¶¶ 7-10. As in *Common Cause*, Dr. Chen created one congressional simulation set that

ignores incumbency and another set that avoids pairing the incumbents in office when the 2016 Plan was drawn. *See id.* Using these simulations, which were produced to Legislative Defendants in *Rucho*, Dr. Chen has identified the extent to which each Plaintiff here lives in a congressional district that is a partisan outlier relative to the district in which he or she would live under neutral maps. Dr. Chen does this analysis using two different partisanship measures: (1) Dr. Hofeller’s seven-statewide-election formula; and (2) the elections specified in the 2016 Adopted Criteria, which are all statewide elections from 2008 to 2014 except for the two presidential elections. *Id.* ¶¶ 12-14.

Dr. Chen finds that all fourteen Plaintiffs live in congressional districts that are partisan outliers relative to their districts under his simulations. *See* Chen Decl. ¶ 17, Figures 1-4. Dr. Chen finds that nine Plaintiffs currently in Republican-leaning districts would live in a more Democratic district in at least 91% of the 1,000 Simulation Set 1 plans. *Id.* ¶ 17, Figures 1-2. He finds that the remaining five Plaintiffs would live in a less Democratic district in at least 86% of his Simulation Set 1 plans, and three of these five Plaintiffs are extreme outliers above the 98% level. *Id.* Dr. Chen finds largely similar results using his Simulation Set 2. *Id.* ¶ 17, Figures 3-4.

As evidenced by Dr. Chen’s analysis, all fourteen Plaintiffs have established a likelihood of standing to challenge both their own districts and the 2016 Plan as a whole. In *Common Cause*, this Court held that a plaintiff with standing to challenge his or her individual district necessarily had standing to challenge his or her entire county grouping “because the manner in which one district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that grouping.” *Common Cause*, slip op. COL ¶ 15. But congressional districts in North Carolina are not drawn in county groupings—the entire statewide map is a single grouping. The drawing of *every* congressional district therefore “is tied to the

drawing of some, and possibly all, of the other” districts. *See also Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002), *abrogated on other grounds by League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (holding that individual voters have standing to challenge entire congressional plan, because a congressional plan “acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole”). Plaintiffs with standing to challenge their individual congressional districts thus have standing to challenge the entire 2016 Plan.

III. Plaintiffs Are Likely To Suffer Irreparable Harm Absent a Preliminary Injunction

Absent a preliminary injunction, Plaintiffs are “likely to sustain irreparable loss.” *Triangle Leasing*, 327 N.C. at 227, 393 S.E.2d at 856-57. Even if the standard for mandatory injunctions applied, Plaintiffs satisfy that standard because their injuries are “immediate, pressing, [and] irreparable.” *Auto. Dealer Res.*, 15 N.C. App. at 639, 190 S.E.2d at 732.

If this Court does not issue an injunction, Plaintiffs will be forced to vote in 2020 in unlawful districts that violate multiple fundamental rights guaranteed by the North Carolina Constitution. That alone is an irreparable injury. “Courts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). The loss of constitutional rights, “for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and an infringement of “voting and associational rights ... cannot be alleviated after the election.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997).

Courts have applied these principles in redistricting cases in North Carolina. In *Harris v. McCrory*, which enjoined two districts in the 2011 congressional plan on the ground that they constituted unconstitutional racial gerrymanders, the court found it “clear ... that the deprivation of a fundamental right, such as limiting the right to vote in a manner that violates the Equal

Protection Clause, constitutes irreparable harm.” 2016 WL 6920368, at *1 (M.D.N.C. Feb. 9, 2016) (internal citations and quotation marks omitted); *see also Harris*, 2016 WL 6920368, at *1 (“To force the plaintiffs to vote again under the unconstitutional plan constitutes irreparable harm to them, and to the other voters in [those districts].”). The federal district court in *Covington v. North Carolina*, which invalidated numerous 2011 state legislative districts as unconstitutional gerrymanders, said the same thing. 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018). And this Court applied these same principles in *Common Cause* in enjoining use of the 2017 state legislative districts. This Court, on its own motion, denied a stay pending appeal because failing to enjoin the plans immediately would cause substantial prejudice to the Individual Plaintiffs and other voters. *Common Cause*, slip op. COL ¶ 179. The Court recognized that “[t]he risk of harm is particularly acute where Plaintiffs and other North Carolina voters have already cast their ballots under unconstitutional district plans in every election this decade.” *Id.* (quoting *Covington*, 2018 WL 604732, at *6).

North Carolinians have been forced to vote in invalid, unlawful districts in every congressional election so far since the 2010 decennial census. The 2011 congressional plan used in the 2012 and 2014 elections was an unconstitutional racial gerrymander. *See Cooper v. Harris*, 137 S. Ct. 1455 (2017). And the 2016 Plan used in the 2016 and 2018 elections is an extreme unconstitutional partisan gerrymander. Absent an injunction, Plaintiffs and other North Carolina voters will have gone a full ten years without voting in valid, lawful congressional districts. The harm to the named Plaintiffs here is concrete. Not only does Dr. Chen demonstrate that all fourteen Plaintiffs would live in markedly different districts if a nonpartisan remedial plan were put into place, only a nonpartisan remedial plan can ensure that all fourteen Plaintiffs no longer live in districts that were not the product of intentional discrimination by

their government. The same is true for millions of other North Carolinians. It is difficult to imagine a more immediate, pressing, and irreparable injury.

IV. There Is Adequate Time to Implement a Remedy Before the 2020 Primaries

There is more than enough time to establish a remedial plan for use in the March 2020 primaries. This is not a matter of speculation—the remedial process in *Common Cause* proves it. In *Common Cause*, this Court gave Legislative Defendants two weeks to adopt remedial state House and state Senate plans. *Common Cause*, slip op. Decree ¶ 4. The General Assembly adopted remedial plans in that time frame; in fact, the General Assembly passed both the state House and state Senate plans within 8 days of the first legislative hearings, which were on September 9, 2019.

Common Cause, moreover, involved *more than five times* as many districts than are at issue here. This Court invalidated a total of 77 districts across 21 different county groupings in two different legislative bodies. This case involves just one statewide map consisting of 13 districts, and does not require application of the complicated Whole County Provision that applies to state legislative districts. If the General Assembly could remedy 77 state legislative districts in just eight days (in part by using one of Dr. Chen’s simulated maps as a base), it certainly can draw a new congressional plan in two weeks.

While sufficient time remains to implement a remedial plan on the current election schedule, the schedule can be adjusted if necessary to provide effective relief. The State Board of Elections has authority “to make reasonable interim rules and regulations” to move administrative deadlines in the event that any North Carolina election law “is held unconstitutional or invalid by a State or federal court.” N.C. Gen. Stat. § 163A-742. And this Court has remedial authority to move the 2020 congressional primary elections, if necessary. *See Common Cause*, slip op. COL ¶¶ 181-82. The Court could move the primaries under one of

two approaches. First, the Court could move all of the State's 2020 primaries, including for offices other than the U.S. House. Alternatively, the Court could move the primaries for only the U.S. House, while keeping the primaries for other offices on the currently scheduled date of March 3, 2020. One possibility would be to move the congressional primaries to the "Second Primary" date that has taken place in every recent election cycle for primary run-offs.

There is precedent for both approaches. In 2002, the North Carolina Supreme Court in *Stephenson v. Bartlett* enjoined the primaries for the state House and state Senate from occurring on the originally scheduled date, 355 N.C. 281, 282, 561 S.E.2d 288, 288-289 (2002), causing all of the State's primaries to move to a different date, 357 N.C. 301, 303, 582 S.E.2d 247, 249 (2003). And in 2016, after a federal court enjoined the State's congressional plan as an unconstitutional racial gerrymander, the General Assembly moved *only* the congressional primaries, while leaving other primaries (including the presidential primary) on the originally scheduled date. See N.C. Sess. Law 2016-2 § 1(b). Such changes are not necessary at this stage, however, as sufficient time remains for the Court to receive briefing and argument, issue a preliminary injunction, and oversee a remedial process under the current election schedule.

V. The Balance of Equities Strongly Favors a Preliminary Injunction

Finally, "a careful balancing of the equities," *A.E.P. Indus.*, 308 N.C. at 400, 302 S.E.2d at 759, weighs decidedly in favor of an injunction. Plaintiffs seek to vindicate interests of the highest order. "Fair and honest elections are to prevail in this state." *Common Cause*, slip op. COL ¶ 28 (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896)). The North Carolina Supreme Court "has elevated this principle to the highest legal standard, noting that it is a 'compelling interest' of the State 'in having fair, honest elections.'" *Id.* (quoting *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993)). Plaintiffs' claims implicate

“fundamental right[s] ... enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Id.* ¶ 31.

This case is about the rights not just of Plaintiffs, but of *all* North Carolina citizens to vote in lawful districts that will reveal, “fairly and truthfully, the will of the people.” *Id.* ¶ 32. Moreover, Plaintiffs and their fellow citizens have been forced to cast their ballots in invalid, unconstitutional congressional districts in *every* election so far this decade. It would be inequitable in the extreme to force them do so yet again—and in “a presidential election year,” no less, “when voter turnout is highest.” *Harris*, 2016 WL 6920368, at *1.⁷

CONCLUSION

For the foregoing reasons, the Court should enter a Preliminary Injunction in substantially the form of the attached proposed order.

⁷ This Court should not require Plaintiffs to post a bond. North Carolina Rule of Civil Procedure 65(c) provides that “[n]o ... preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.” But it is well settled that there are “some instances when it is proper for no security to be required of a party seeking injunctive relief.” *Staton v. Russell*, 151 N.C. App. 1, 12, 565 S.E.2d 103, 110 (2002) (quotation marks omitted). This is just such an instance. There is no prospect that any party to this case will be “wrongfully enjoined” or incur any recoverable “costs or damages” therefrom. And no security is required where, as here, “one purpose of the ... injunction is to preserve the court’s jurisdiction.” 151 N.C. App. at 13, 565 S.E.2d at 110.

Respectfully submitted this the 30th day of September, 2019

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**Pro Hac Vice Application Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants North Carolina State Board of Elections and its members via *e-mail*, and served a copy of the foregoing to the remaining defendants by *U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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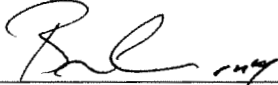
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This the 30th day of September, 2019.


Burton Craige, NC Bar No. 9180

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF DR.
JOWEI CHEN**

I, Dr. Jowei Chen, upon my oath, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. I am also a Research Associate Professor at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a Research Associate at the Spatial Social Science Laboratory at Stanford University. In 2007, I received a M.S. in Statistics from Stanford University, and in 2009, I received a Ph.D. in Political Science from Stanford University.
3. I have published academic papers on legislative districting and political geography in several political science journals, including The American Journal of Political Science and The American Political Science Review, and Election Law Journal. My academic areas of expertise include legislative elections, spatial statistics, geographic information systems (GIS) data, redistricting, racial politics, legislatures, and political geography. I have expertise in

the use of computer simulations of legislative districting and in analyzing political geography, elections, and redistricting.

4. I have testified either at deposition or at trial in the following cases: *Rene Romo et al. v. Ken Detzner et al.* (Fla. 2d Judicial Cir. Leon Cnty. 2013); *Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District and St. Louis County Board of Election Commissioners* (E.D. Mo. 2014); *Raleigh Wake Citizens Association et al. v. Wake County Board of Elections* (E.D.N.C. 2015); *City of Greensboro et al. v. Guilford County Board of Elections* (M.D.N.C. 2015); *Common Cause et al. v. Robert A. Rucho et al.* (M.D.N.C. 2016); *The League of Women Voters of Pennsylvania et al. v. Commonwealth of Pennsylvania et al.* (No. 261 M.D. 2017); *Georgia State Conference of the NAACP et al. v. The State of Georgia et al.* (N.D. Ga. 2017); *The League of Women Voters of Michigan et al. v. Ruth Johnson et al.* (E.D. Mich. 2017); *William Whitford et al. v. Beverly Gill et al.* (W.D. Wis. 2018); *Common Cause et al. v. David Lewis et al.* (N.C. Super. 2019).

5. I have been retained by Plaintiffs in the above-captioned matter. My Curriculum Vitae is attached to this Declaration. I am being compensated \$500 per hour for my work in this case.

6. Plaintiffs' counsel have asked me to analyze the effect of North Carolina's 2016 enacted congressional districting plan (the "2016 Plan") on the partisan composition of the individual Plaintiffs' congressional districts.

7. To analyze this question, I rely upon two sets of simulated congressional districting plans that I have created. I originally created these simulated plans for use in the federal lawsuit *Common Cause v. Rucho*. The simulated plans I use for my analysis in this

Declaration are the same 2,000 simulated plans that comprised my Simulation Set 1 and Simulation Set 2 in *Rucho*.

8. Simulation Set 1 and Simulation Set 2 use the same general approach that I employed in creating simulated state House and state Senate plans in *Common Cause v. Lewis*. Specifically, I instructed the computer to generate congressional districting plans that strictly follow all of the non-partisan criteria enumerated in the February 16, 2016 Adopted Criteria of the Joint Select Committee on Congressional Redistricting (the “2016 Adopted Criteria”).

9. In Simulation Set 1, the computer algorithm created 1,000 independent simulated plans following the five traditional districting criteria from the 2016 Adopted Criteria:

- a) Population Equality: North Carolina’s 2010 Census population was 9,535,483, so districts in the 13-member plan have an ideal population of 733,498.7.

Specifically, then, the computer simulation algorithm populated each districting plan such that precisely nine districts have a population of 733,499, while the remaining four districts have a population of 733,498.

- b) Contiguity: The simulations required districts to be geographically contiguous.

As described in the Adopted Criteria, water contiguity is permissible.

- c) Minimizing County Splits: The simulations avoided splitting any of North Carolina’s 100 counties, except when doing so is necessary to avoid violating one of the aforementioned criteria. Furthermore, as mandated by the 2016 Adopted Criteria, the computer always avoided splitting a county into more than two simulated districts.

- d) Minimizing VTD Splits: North Carolina is divided into 2,692 VTDs. The computer simulation algorithm attempted to keep these VTDs intact and not split

them into multiple districts, except when doing so is necessary for creating equally-populated districts.

- e) Geographic Compactness: The simulation algorithm prioritized the drawing of geographically compact districts whenever doing so does not violate any of the aforementioned criteria.

10. In Simulation Set 2, the computer algorithm created 1,000 independent simulated plans following the same five traditional districting criteria specified above, plus avoiding pairing the incumbents who were in office at the time of the 2016 redistricting.

11. I evaluated the congressional districts in which each Plaintiff would live under the 2,000 computer-simulated using the following list of residential addresses for the Plaintiffs that counsel for the Plaintiffs provided me. I used these addresses to identify the specific district in which each Plaintiff would be located under each computer-simulated plan, as well as under the 2016 Plan.

- a) Amy Clare Oseroff: 119 N Longmeadow Rd. Greenville, NC 27858
- b) Rebecca Harper: 1841 Stonebanks Loop, Cary, NC 27518
- c) David Dwight Brown: 18 Laurel Brook Ct. Greensboro, NC 27407
- d) Joseph Gates: 419 Kyfields, Weaverville, NC 28787
- e) Mark S. Peters: 5 Carter Crest Ln, Fletcher, NC 28732
- f) Virginia Walters Brien: 3028 Airlie St, Charlotte, NC, 28205
- g) John Balla: 7353 Newport Ave., Raleigh, NC 27613
- h) Kathleen Barnes: 392 Sunny Acre Lane, Brevard, NC 28712
- i) Jackson Thomas Dunn, Jr.: 1629 Providence Rd, Charlotte NC 28207
- j) Donald Allan Rumph: 3238 Quail Pointe Dr., Greenville, NC 27858-7335

k) Lily Nicole Quick: 4338 Clovelly Drive, Greensboro, NC 27406

l) Shawn Rush: 104 South Long Street, East Spencer, NC 28144

m) Gettys Cohen: 3 Aspen Dr, Smithfield, NC 27577

n) Richard R. Crews: 1503 Land Harbor, Newland NC, 28657

12. To compare the partisanship of the districts in which each Plaintiff would live under the simulated plans and the 2016 Plan, I use two different measures of partisanship.

13. First, I use the statewide elections specified in the 2016 Adopted Criteria. The 2016 Adopted Criteria state that when evaluating the political composition of congressional districts, the General Assembly would consider “election results in statewide contests since January 1, 2008, not including the last two presidential contests.” There were 20 non-presidential statewide elections between January 1, 2008 and the adoption of the 2016 Plan, and I use these 20 statewide elections to measure the average Democratic vote share in each Plaintiff’s district under the simulated plans and under the 2016 Plan.

14. Second, I use the partisanship formula that Dr. Hofeller disclosed in the *Rucho* case that he had used in drawing the 2016 Plan. The Hofeller formula aggregates together, with equal weights, the partisan results from seven statewide elections: The 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election. I use these seven statewide elections to measure the average Democratic vote share in each Plaintiff’s district under the simulated plans and under the 2016 Plan.

15. Figures 1 to 4 present the results of this analysis. These Figures each list the individual Plaintiffs and describe the partisanship of each Plaintiff’s district of residence in the 2016 Plan, as well as in one of the sets of 1,000 simulated congressional districting plans.

Specifically, Figures 1 and 2 describe each Plaintiff's district of residence in the 2016 House Plan and compare it to the district in which that Plaintiff would reside under each of the 1,000 simulated plans in Simulation Set 1. Figure 1 uses the 20 statewide elections from 2008-2014 to measure the partisanship of districts, and Figure 2 uses the Hofeller formula to measure the partisanship of districts. Figures 3 and 4 repeat this analysis but using Simulation Set 2 rather than Simulation Set 1.

16. To explain these analyses with an example, in Figure 1, each row corresponds to a particular individual Plaintiff. In the first row, describing plaintiff Amy Clare Oseroff, the red star depicts the partisanship of the Plaintiff's 2016 Plan district (CD-1), as measured by Democratic vote share using the 20 statewide elections from 2008-2014. The 1,000 gray circles on this row depict the Democratic vote share of each of the 1,000 simulated districts in which the Plaintiff would reside in each of the 1,000 simulated plans in Simulation Set 1, based on that Plaintiff's current home address. In the far right margin, to the right of each row, I list in parentheses how many of the 1,000 simulated plans would place the plaintiff in a more Republican-leaning district (on the left) and how many of the 1,000 simulations would place the plaintiff in a more Democratic-leaning district (on the right) than the Plaintiff's 2016 Plan district. Thus, for example, the first row of Figure 1 reports that 100% of the 1,000 computer-simulated plans in Simulation Set 1 would place Plaintiff Amy Clare Oseroff in a less Democratic-leaning district than her actual 2016 Plan district (CD-1). Therefore, I can conclude that Oseroff's 2016 Plan district is a partisan statistical outlier when compared to her district under the 1,000 Simulation Set 1 plans.

17. Figures 1 and 2 show that nine Plaintiffs who currently live in Republican-leaning districts would live in a more Democratic district in at least 91% of the 1,000 Simulation Set 1

plans (Cohen, Quick, Rumph, Dunn, Barnes, Peters, Gates, Brown, and Harper). Figures 1 and 2 show that the remaining five Plaintiffs would live in a less Democratic district in at least 86% of the Simulation Set 1 plans (Oseroff, Rush, Crews, Balla, and Brien), and three of these five Plaintiffs are extreme outliers above the 98% level. Figures 3 and 4 show largely similar results for Simulation Set 2.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 30th day of September, 2019.

A handwritten signature in black ink, appearing to read 'J. Chen', with a horizontal line extending from the end of the signature.

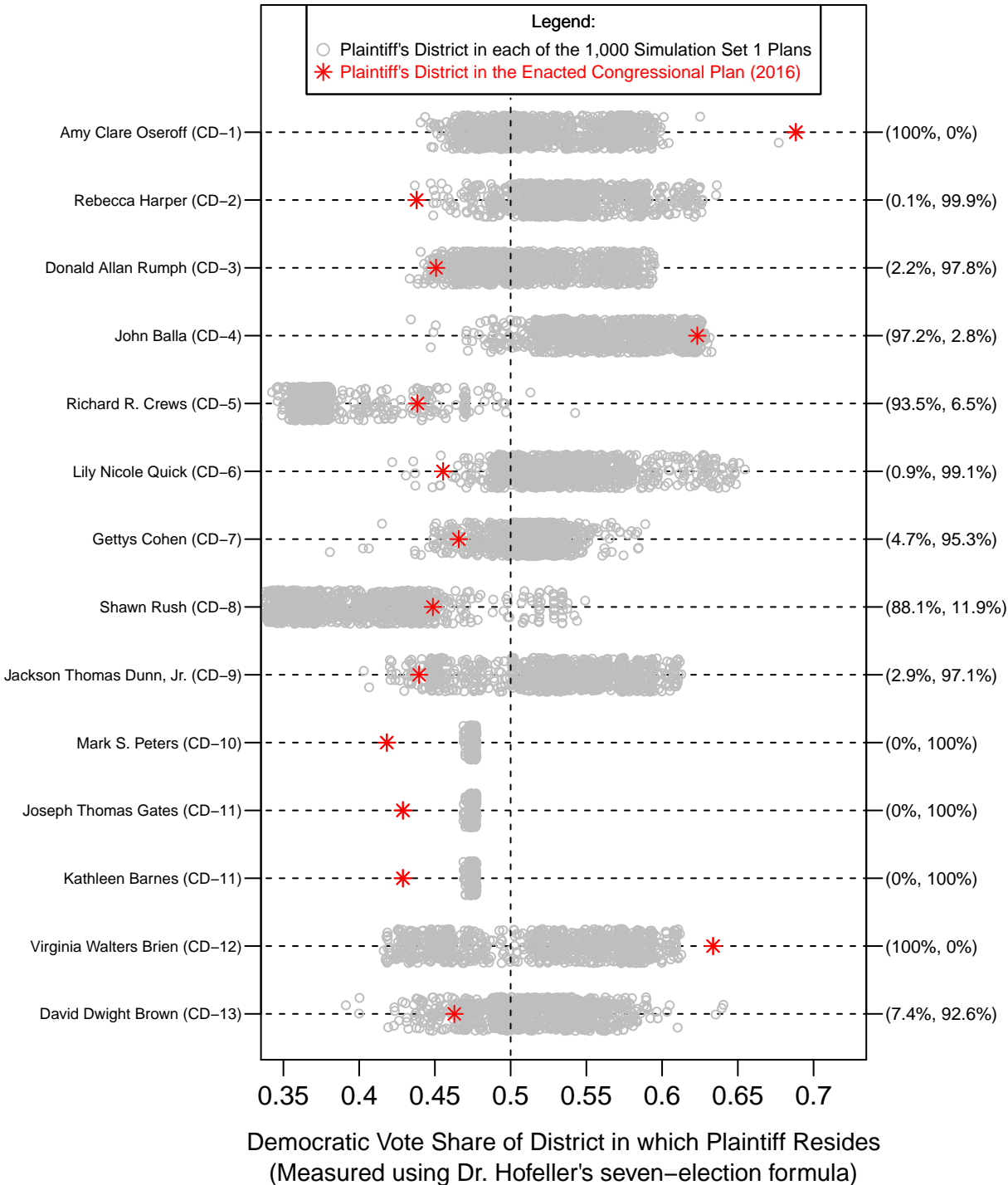
Dr. Jowei Chen

Simulation Set 1

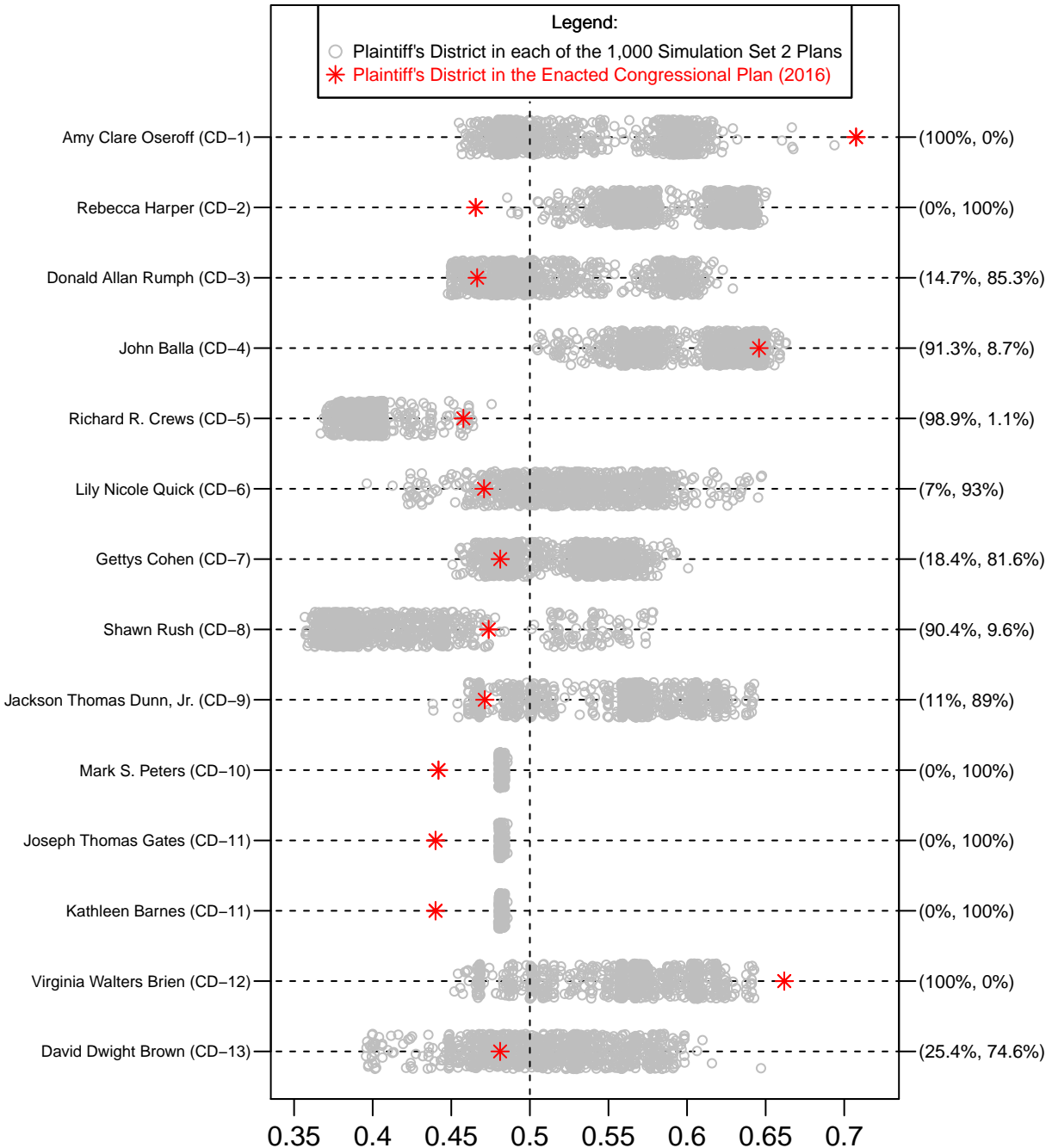


Democratic Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008–2014)

Simulation Set 1

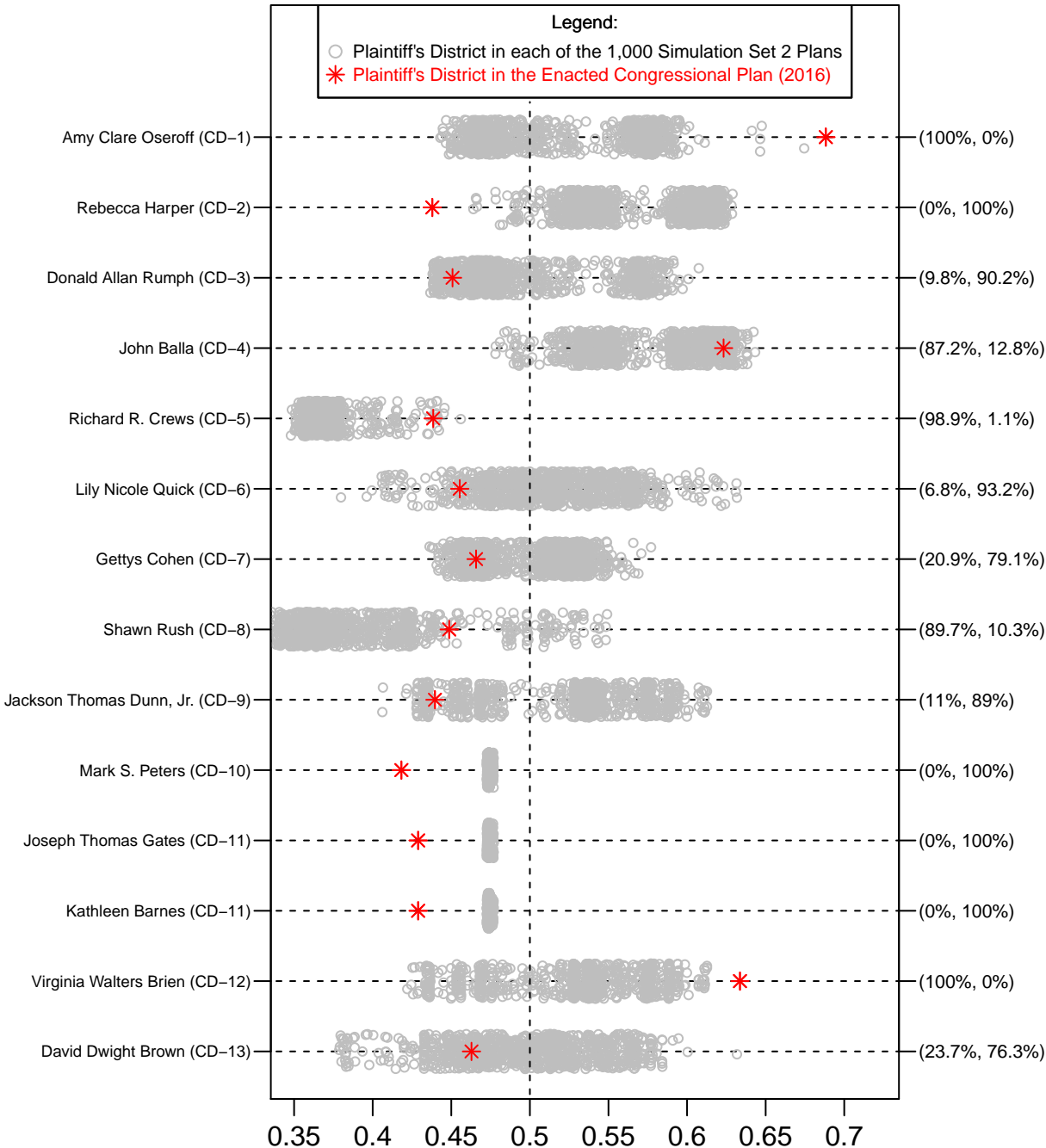


Simulation Set 2



Democratic Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008–2014)

Simulation Set 2



Democratic Vote Share of District in which Plaintiff Resides
(Measured using Dr. Hofeller's seven-election formula)

Jowei Chen
Curriculum Vitae

Department of Political Science
University of Michigan
5700 Haven Hall
505 South State Street
Ann Arbor, MI 48109-1045
Phone: 917-861-7712, Email: jowei@umich.edu
Website: <http://www.umich.edu/~jowei>

Academic Positions:

Associate Professor (2015-present), Assistant Professor (2009-2015), Department of Political Science, University of Michigan.
Faculty Associate, Center for Political Studies, University of Michigan, 2009 – Present.
W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2013.
Principal Investigator and Senior Research Fellow, Center for Governance and Public Policy Research, Willamette University, 2013 – Present.

Education:

Ph.D., Political Science, Stanford University (June 2009)
M.S., Statistics, Stanford University (January 2007)
B.A., Ethics, Politics, and Economics, Yale University (May 2004)

Publications:

Chen, Jowei and Neil Malhotra. 2007. “The Law of k/n: The Effect of Chamber Size on Government Spending in Bicameral Legislatures.”

[*American Political Science Review*, 101\(4\): 657-676.](#)

Chen, Jowei, 2010. “The Effect of Electoral Geography on Pork Barreling in Bicameral Legislatures.”

[*American Journal of Political Science*, 54\(2\): 301-322.](#)

Chen, Jowei, 2013. “Voter Partisanship and the Effect of Distributive Spending on Political Participation.”

[*American Journal of Political Science*, 57\(1\): 200-217.](#)

Chen, Jowei and Jonathan Rodden, 2013. “Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures”

[*Quarterly Journal of Political Science*, 8\(3\): 239-269.](#)

Bradley, Katharine and Jowei Chen, 2014. "Participation Without Representation? Senior Opinion, Legislative Behavior, and Federal Health Reform."

[Journal of Health Politics, Policy and Law. 39\(2\), 263-293.](#)

Chen, Jowei and Tim Johnson, 2015. "Federal Employee Unionization and Presidential Control of the Bureaucracy: Estimating and Explaining Ideological Change in Executive Agencies."

[Journal of Theoretical Politics, Volume 27, No. 1: 151-174.](#)

Bonica, Adam, Jowei Chen, and Tim Johnson, 2015. "Senate Gate-Keeping, Presidential Staffing of 'Inferior Offices' and the Ideological Composition of Appointments to the Public Bureaucracy."

[Quarterly Journal of Political Science. Volume 10, No. 1: 5-40.](#)

Chen, Jowei and Jonathan Rodden, 2015. "Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders."

[Election Law Journal. Volume 14, Number 4: 331-345.](#)

Chen, Jowei and David Cottrell, 2016. "Evaluating Partisan Gains from Congressional Gerrymandering: Using Computer Simulations to Estimate the Effect of Gerrymandering in the U.S. House."

[Electoral Studies. Volume 44 \(December 2016\): 329-340.](#)

Chen, Jowei, 2017. "Analysis of Computer-Simulated Districting Maps for the Wisconsin State Assembly."

[Election Law Journal. Volume 16, Number 4 \(December 2017\): 417-442.](#)

Non-Peer-Reviewed Publication:

Chen, Jowei and Tim Johnson. 2017. "Political Ideology in the Bureaucracy."

[Global Encyclopedia of Public Administration, Public Policy, and Governance.](#)

Chen, Jowei. October 4, 2017. Time Magazine Op-Ed.

<http://time.com/4965673/wisconsin-supreme-court-gerrymandering-research/>

Chen, Jowei and Jonathan Rodden. January 2014. New York Times Op-Ed.

<https://www.nytimes.com/2014/01/26/opinion/sunday/its-the-geography-stupid.html>

Research Grants:

Principal Investigator. [National Science Foundation Grant SES-1459459](#), September 2015 – August 2018 (\$165,008). "The Political Control of U.S. Federal Agencies and Bureaucratic Political Behavior."

"Economic Disparity and Federal Investments in Detroit," (with Brian Min) 2011. Graham Institute, University of Michigan (\$30,000).

“The Partisan Effect of OSHA Enforcement on Workplace Injuries,” (with Connor Raso) 2009.
John M. Olin Law and Economics Research Grant (\$4,410).

Invited Talks:

September, 2011. University of Virginia, American Politics Workshop.
October 2011. Massachusetts Institute of Technology, American Politics Conference.
January 2012. University of Chicago, Political Economy/American Politics Seminar.
February 2012. Harvard University, Positive Political Economy Seminar.
September 2012. Emory University, Political Institutions and Methodology Colloquium.
November 2012. University of Wisconsin, Madison, American Politics Workshop.
September 2013. Stanford University, Graduate School of Business, Political Economy Workshop.
February 2014. Princeton University, Center for the Study of Democratic Politics Workshop.
November 2014. Yale University, American Politics and Public Policy Workshop.
December 2014. American Constitution Society for Law & Policy Conference: Building the Evidence to Win Voting Rights Cases.
February 2015. University of Rochester, American Politics Working Group.
March 2015. Harvard University, Voting Rights Act Workshop.
May 2015. Harvard University, Conference on Political Geography.
October 2015. George Washington University School of Law, Conference on Redistricting Reform.
September 2016. Harvard University Center for Governmental and International Studies, Voting Rights Institute Conference.
March 2017. Duke University, Sanford School of Public Policy, Redistricting Reform Conference.
October 2017. Willamette University, Center for Governance and Public Policy Research
October 2017, University of Wisconsin, Madison. Geometry of Redistricting Conference.
February 2018: University of Georgia Law School
September 2018. Willamette University.
November 2018. Yale University, Redistricting Workshop.
November 2018. University of Washington, Severyns Ravenholt Seminar in Comparative Politics.
January 2019. Duke University, Reason, Reform & Redistricting Conference.
February 2019. Ohio State University, Department of Political Science. Departmental speaker series.

Conference Service:

Section Chair, 2017 APSA (Chicago, IL), Political Methodology Section
Discussant, 2014 Political Methodology Conference (University of Georgia)
Section Chair, 2012 MPSA (Chicago, IL), Political Geography Section.
Discussant, 2011 MPSA (Chicago, IL) “Presidential-Congressional Interaction.”
Discussant, 2008 APSA (Boston, MA) “Congressional Appropriations.”
Chair and Discussant, 2008 MPSA (Chicago, IL) “Distributive Politics: Parties and Pork.”

Conference Presentations and Working Papers:

“Ideological Representation of Geographic Constituencies in the U.S. Bureaucracy,” (with Tim Johnson). 2017 APSA.

“Incentives for Political versus Technical Expertise in the Public Bureaucracy,” (with Tim Johnson). 2016 APSA.

“Black Electoral Geography and Congressional Districting: The Effect of Racial Redistricting on Partisan Gerrymandering”. 2016 Annual Meeting of the Society for Political Methodology (Rice University)

“Racial Gerrymandering and Electoral Geography.” Working Paper, 2016.

“Does Deserved Spending Win More Votes? Evidence from Individual-Level Disaster Assistance,” (with Andrew Healy). 2014 APSA.

“The Geographic Link Between Votes and Seats: How the Geographic Distribution of Partisans Determines the Electoral Responsiveness and Bias of Legislative Elections,” (with David Cottrell). 2014 APSA.

“Gerrymandering for Money: Drawing districts with respect to donors rather than voters.” 2014 MPSA.

“Constituent Age and Legislator Responsiveness: The Effect of Constituent Opinion on the Vote for Federal Health Reform.” (with Katharine Bradley) 2012 MPSA.

“Voter Partisanship and the Mobilizing Effect of Presidential Advertising.” (with Kyle Dropp) 2012 MPSA.

“Recency Bias in Retrospective Voting: The Effect of Distributive Benefits on Voting Behavior.” (with Andrew Feher) 2012 MPSA.

“Estimating the Political Ideologies of Appointed Public Bureaucrats,” (with Adam Bonica and Tim Johnson) 2012 Annual Meeting of the Society for Political Methodology (University of North Carolina)

“Tobler’s Law, Urbanization, and Electoral Bias in Florida.” (with Jonathan Rodden) 2010 Annual Meeting of the Society for Political Methodology (University of Iowa)

“Unionization and Presidential Control of the Bureaucracy” (with Tim Johnson) 2011 MPSA.

“Estimating Bureaucratic Ideal Points with Federal Campaign Contributions” 2010 APSA. (Washington, DC).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” Vanderbilt University Conference on Bicameralism, 2009.

“When Do Government Benefits Influence Voters’ Behavior? The Effect of FEMA Disaster Awards on US Presidential Votes,” 2009 APSA (Toronto, Canada).

“Are Poor Voters Easier to Buy Off?” 2009 APSA (Toronto, Canada).

“Credit Sharing Among Legislators: Electoral Geography’s Effect on Pork Barreling in Legislatures,” 2008 APSA (Boston, MA).

“Buying Votes with Public Funds in the US Presidential Election,” Poster Presentation at the 2008 Annual Meeting of the Society for Political Methodology (University of Michigan).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” 2008 MPSA.

“Legislative Free-Riding and Spending on Pure Public Goods,” 2007 MPSA (Chicago, IL).

“Free Riding in Multi-Member Legislatures,” (with Neil Malhotra) 2007 MPSA (Chicago, IL).

“The Effect of Legislature Size, Bicameralism, and Geography on Government Spending: Evidence from the American States,” (with Neil Malhotra) 2006 APSA (Philadelphia, PA).

Reviewer Service:

American Journal of Political Science
American Political Science Review
Journal of Politics
Quarterly Journal of Political Science
American Politics Research
Legislative Studies Quarterly
State Politics and Policy Quarterly
Journal of Public Policy
Journal of Empirical Legal Studies
Political Behavior
Political Research Quarterly
Political Analysis
Public Choice
Applied Geography

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF
BLAKEMAN B. ESSELSTYN**

I, Blakeman B. Esselstyn, upon my oath, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am a Principal at FrontWater, LLC and EQV Maps.
3. I have been retained by Plaintiffs in the above captioned matter. My Curriculum Vitae is attached to this Declaration. I am being compensated \$200 per hour for my work in this case.
4. At Plaintiffs' request, I have created the enclosed maps of North Carolina's current congressional districts.
5. The first thirteen enclosed maps show each of North Carolina's thirteen congressional districts. In each of these maps, the red and blue shading represents the relative vote margin in the 2016 North Carolina Attorney General election in a single VTD, with darker blue shading representing larger Democratic vote margins and darker red shading indicating larger Republican vote margins (both normalized by acreage). Using actual vote differentials

rather than percentage differentials allows one to more easily see the effects of small shifts in district lines on the ultimate outcomes.

6. I obtained all map data for these thirteen maps from the North Carolina General Assembly. I obtained the 2016 elections data via a public records request to the North Carolina General Assembly.

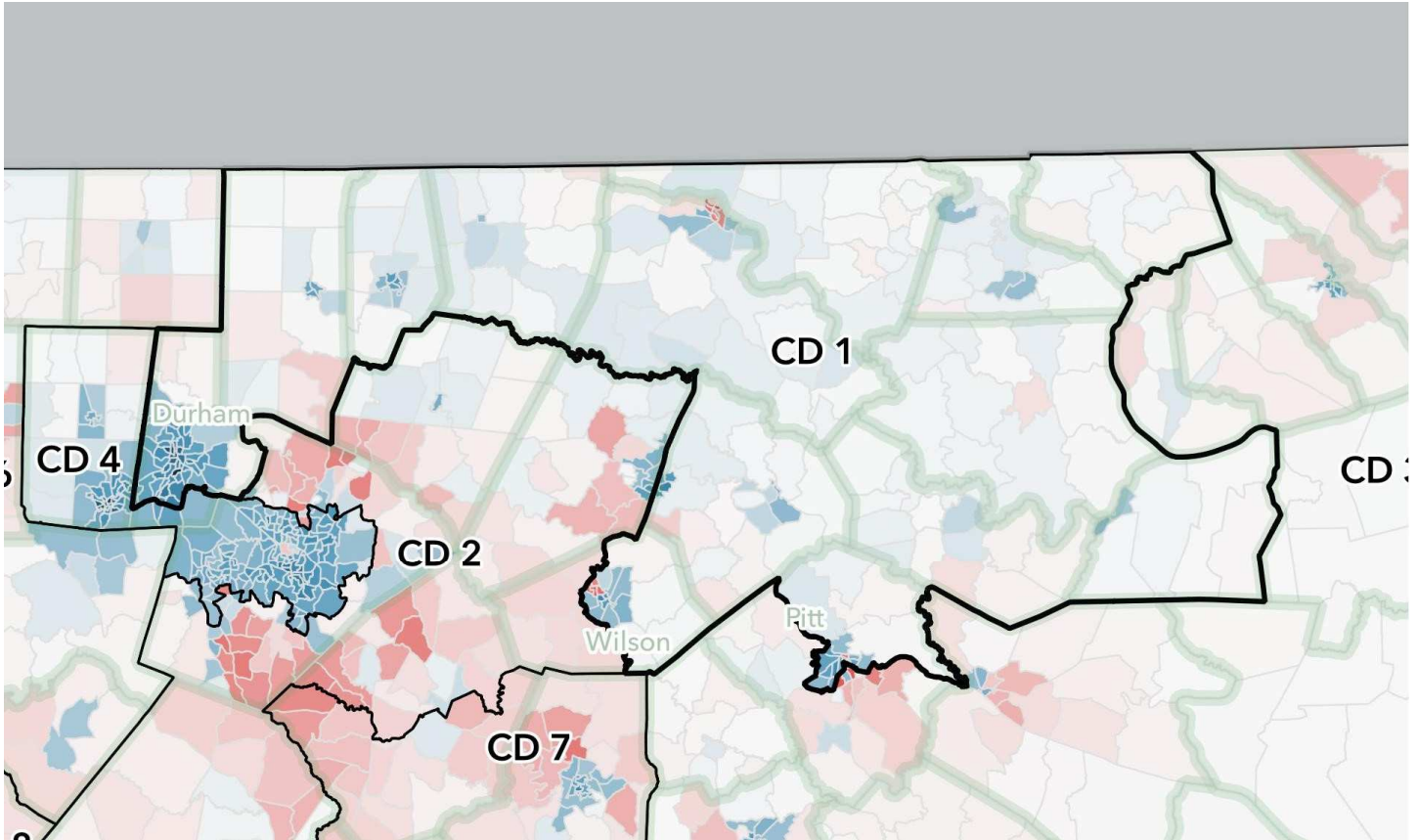
7. The final two enclosed maps show the division of the campus of North Carolina A&T State University across Congressional Districts 6 and 13, and the division of the campus of UNC Asheville across Congressional Districts 10 and 11. I created these maps using the QGIS software program.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

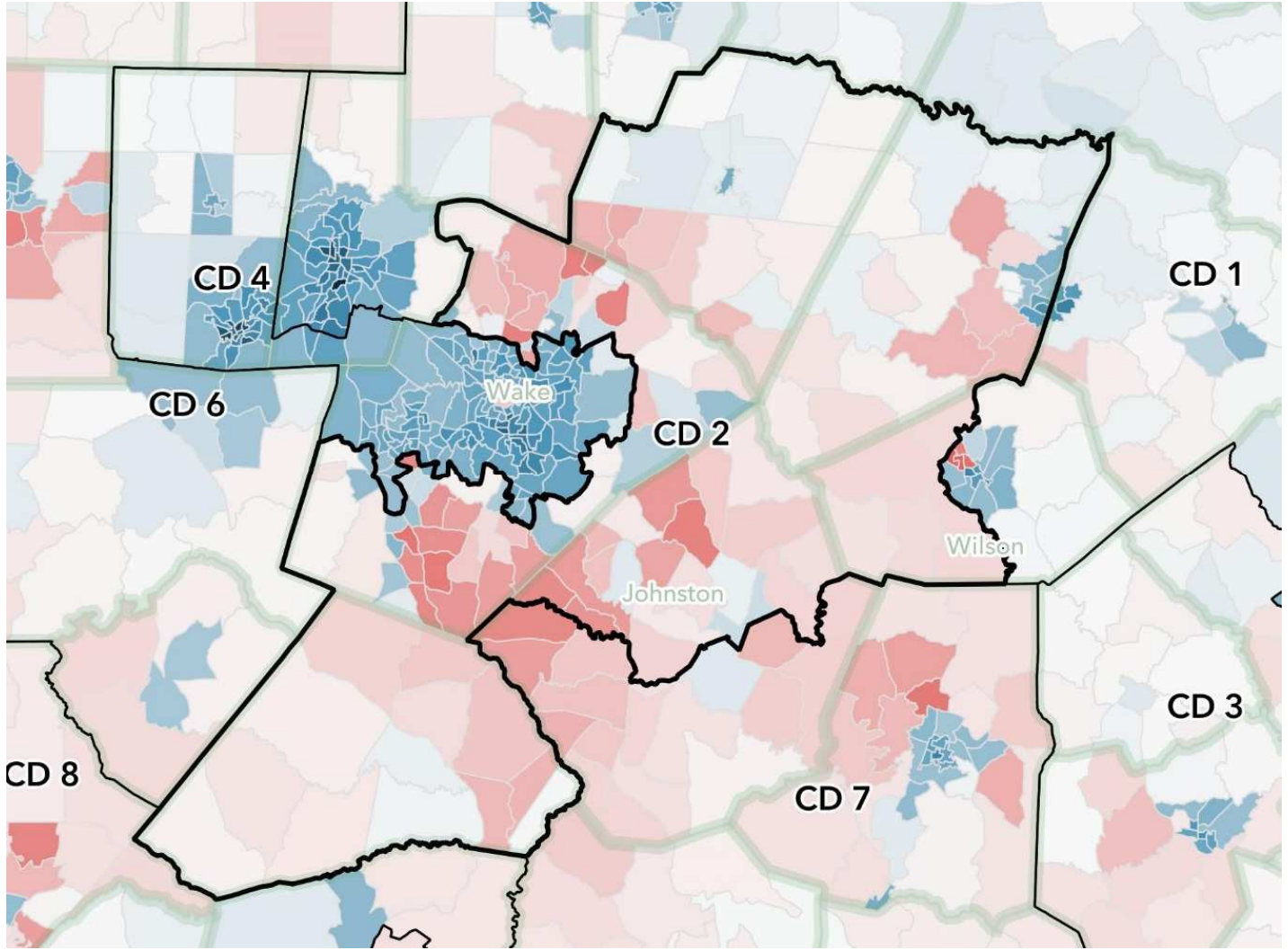
This 30th day of September, 2019


Blakeman B. Esselstyn

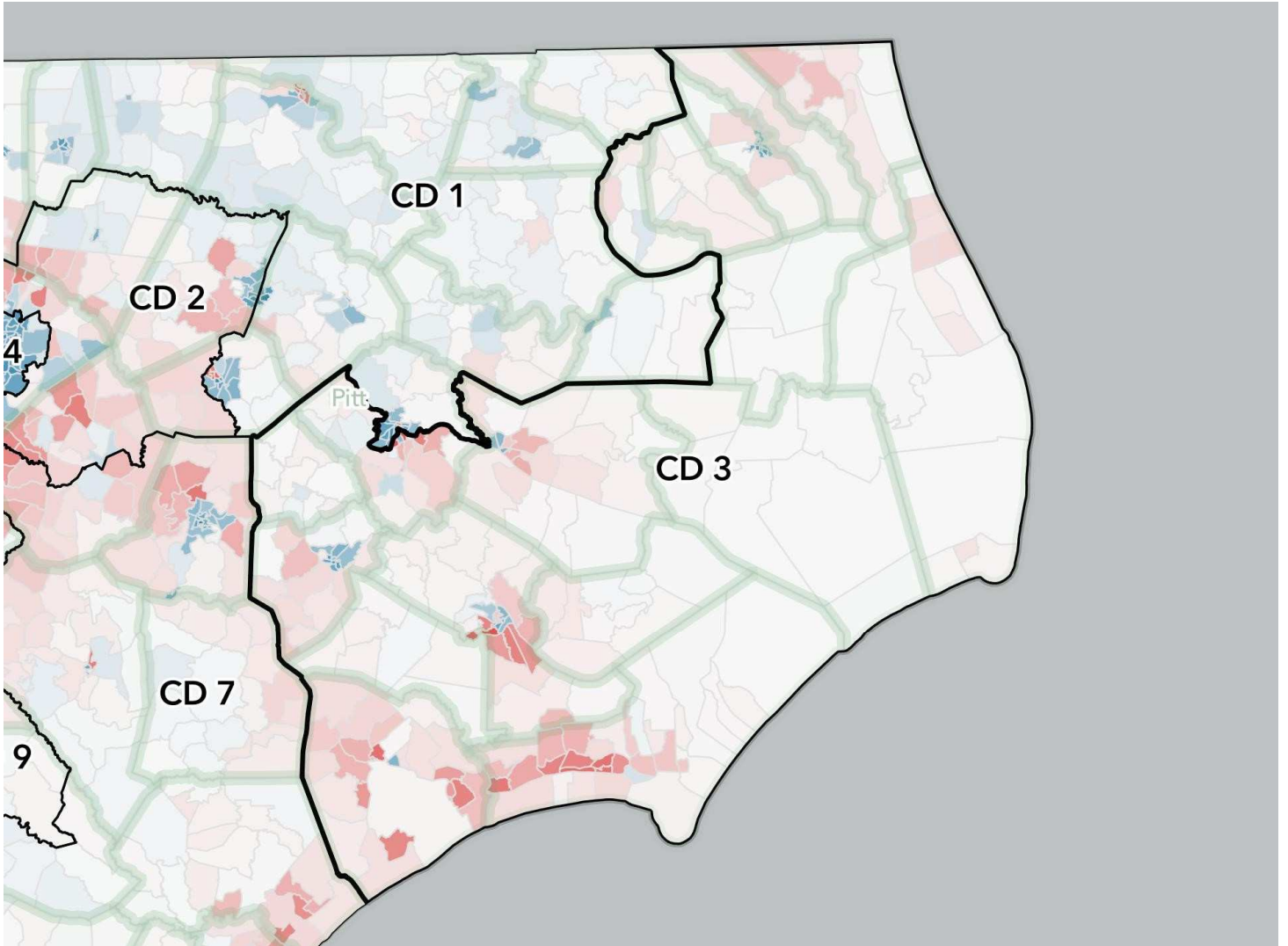
Congressional District 1



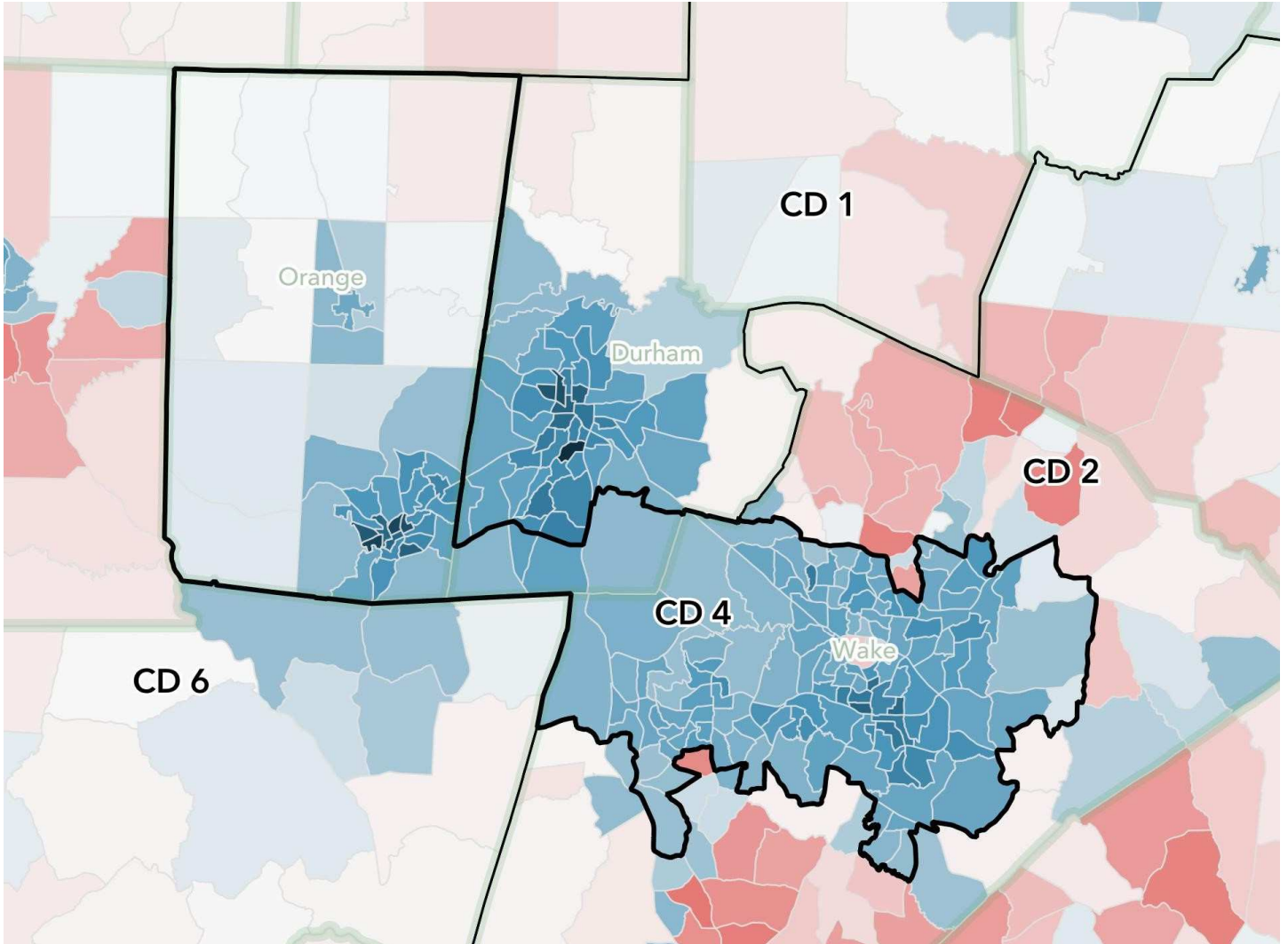
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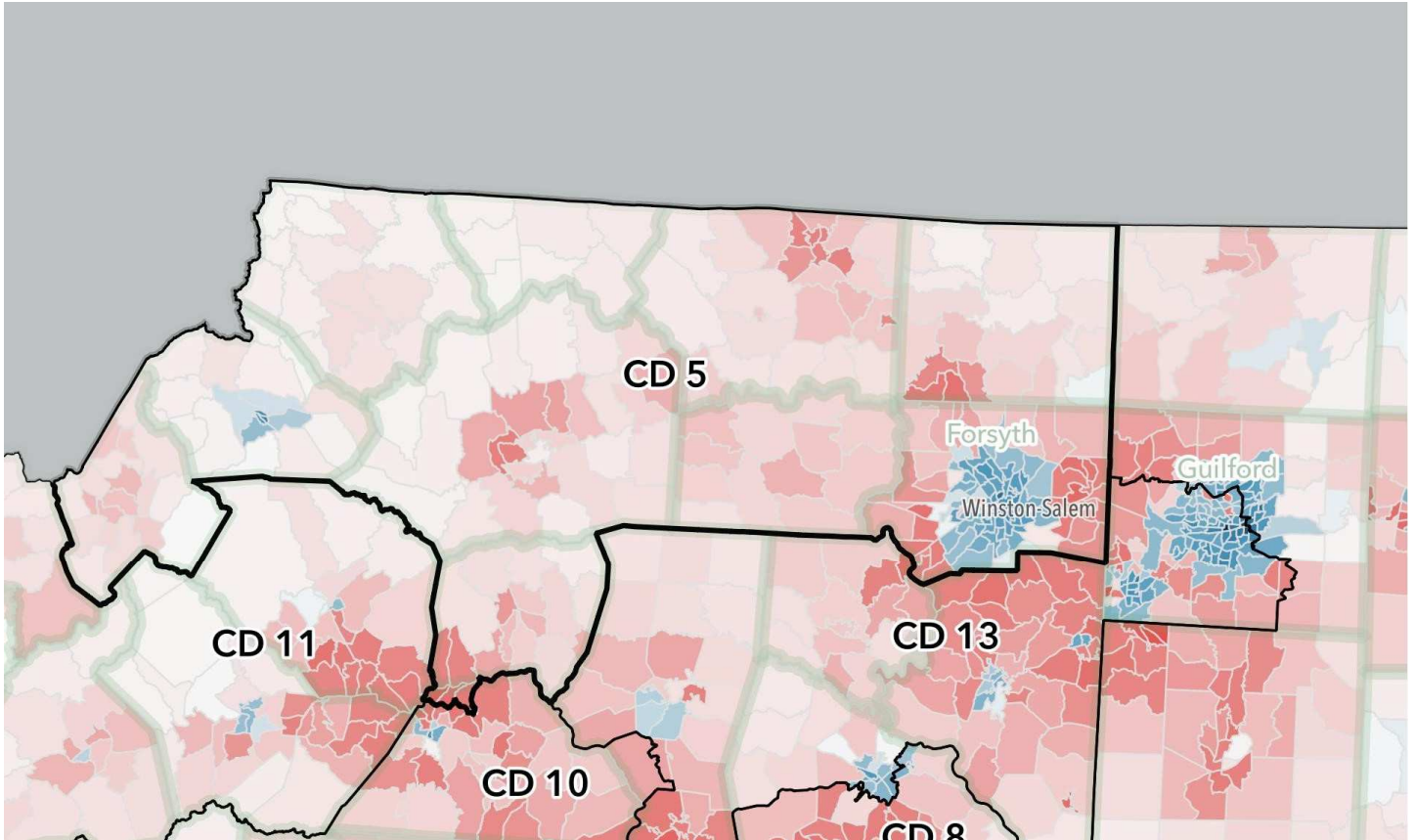
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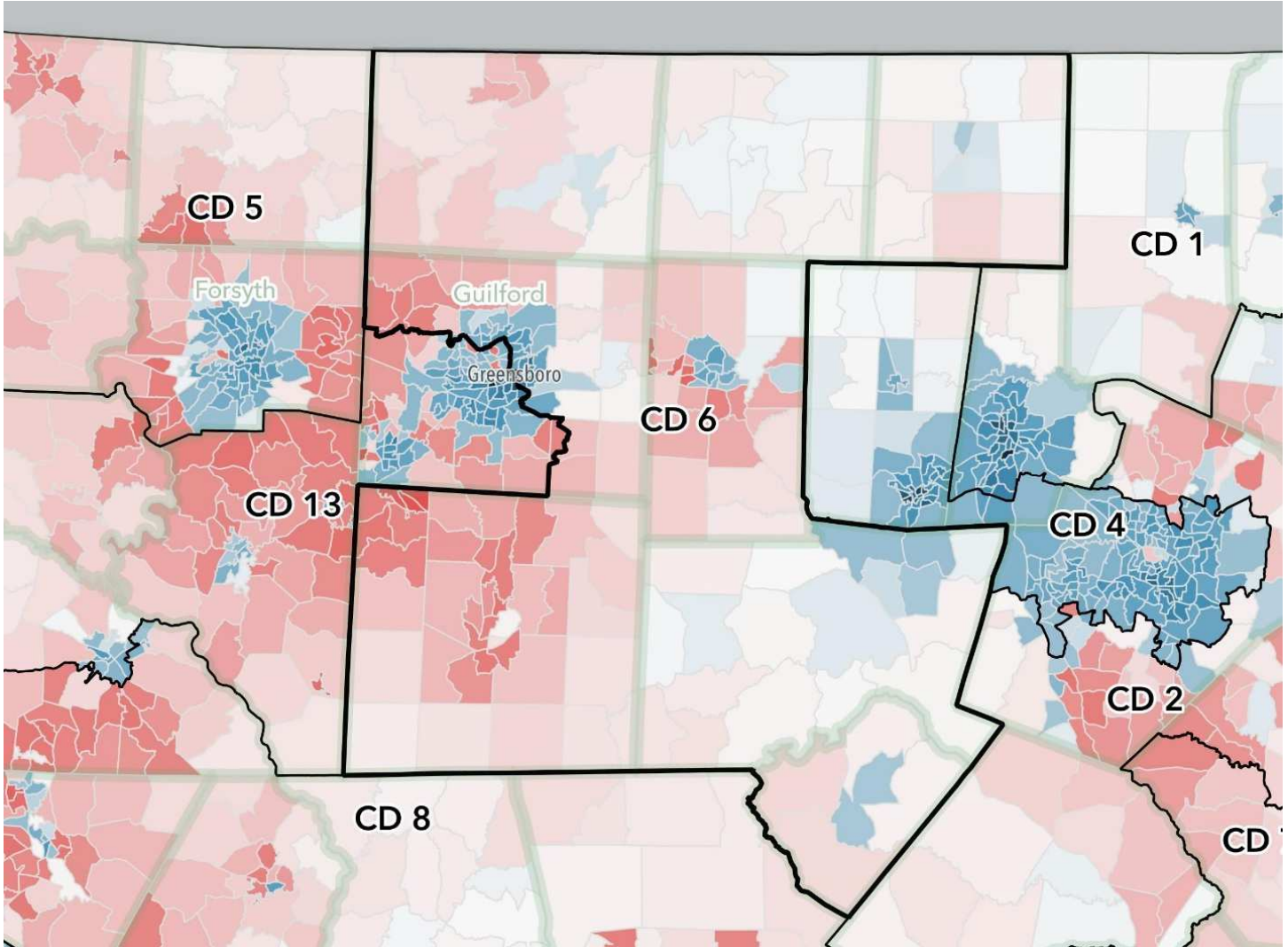
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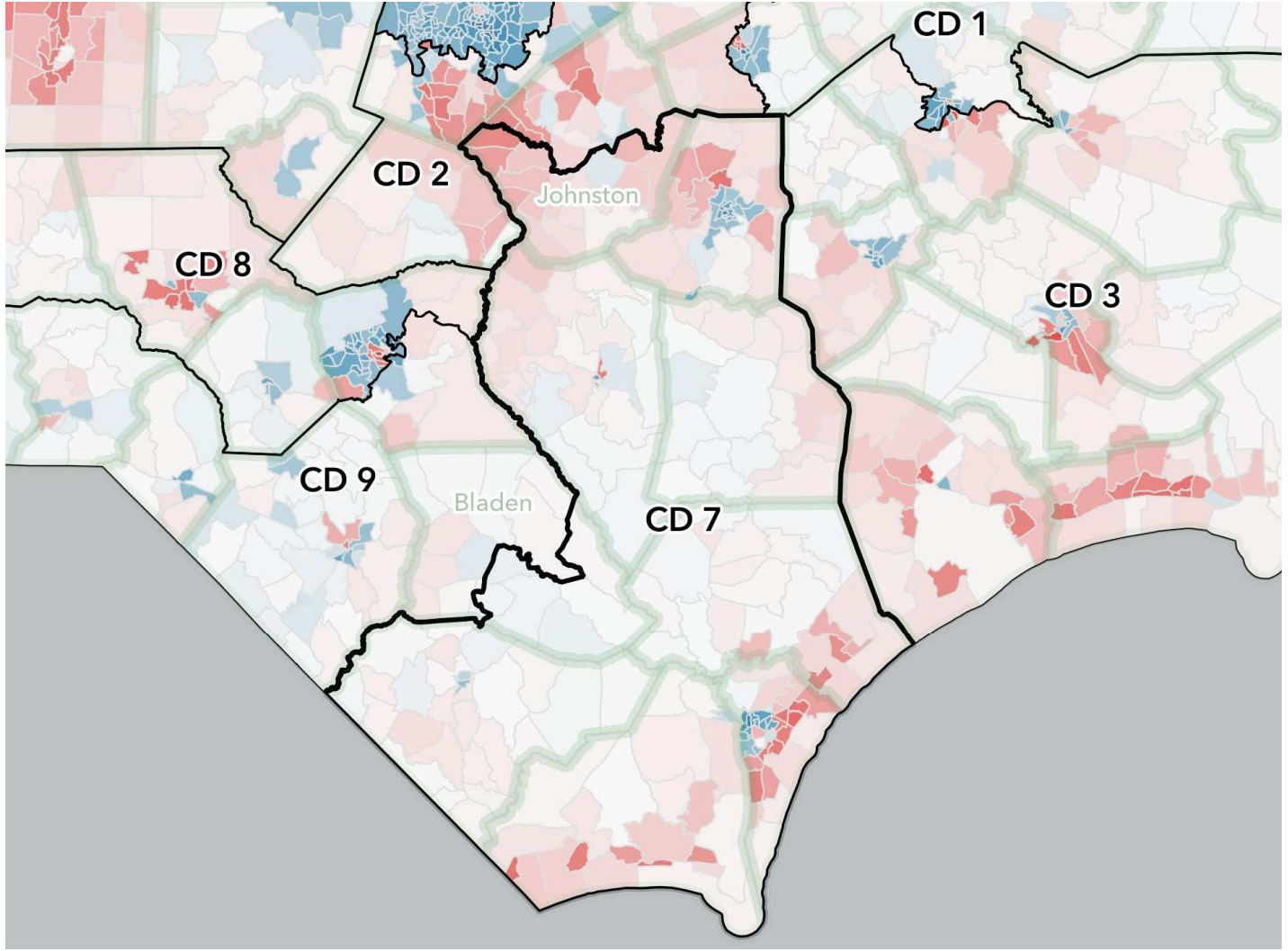
Congressional District 5



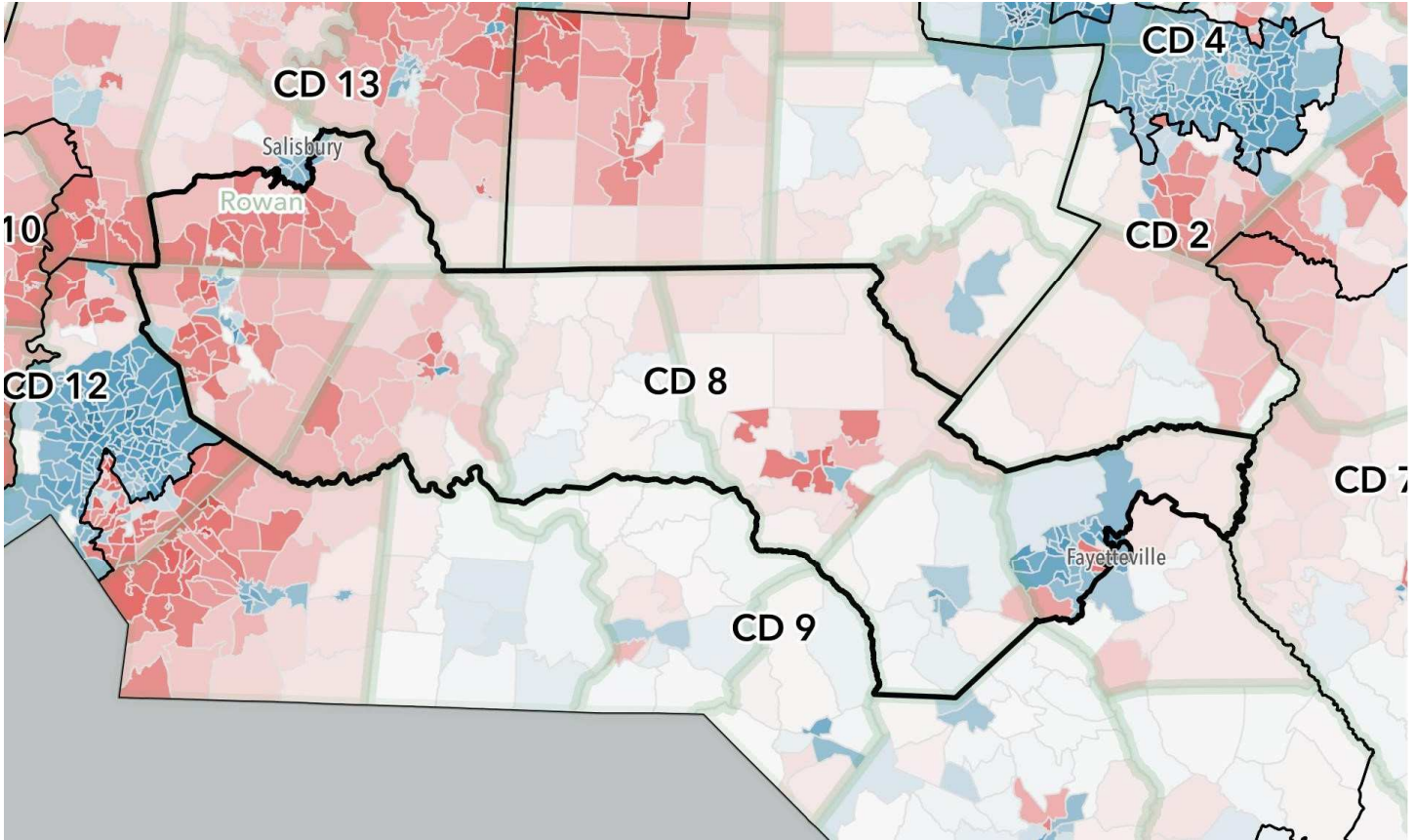
Congressional District 6



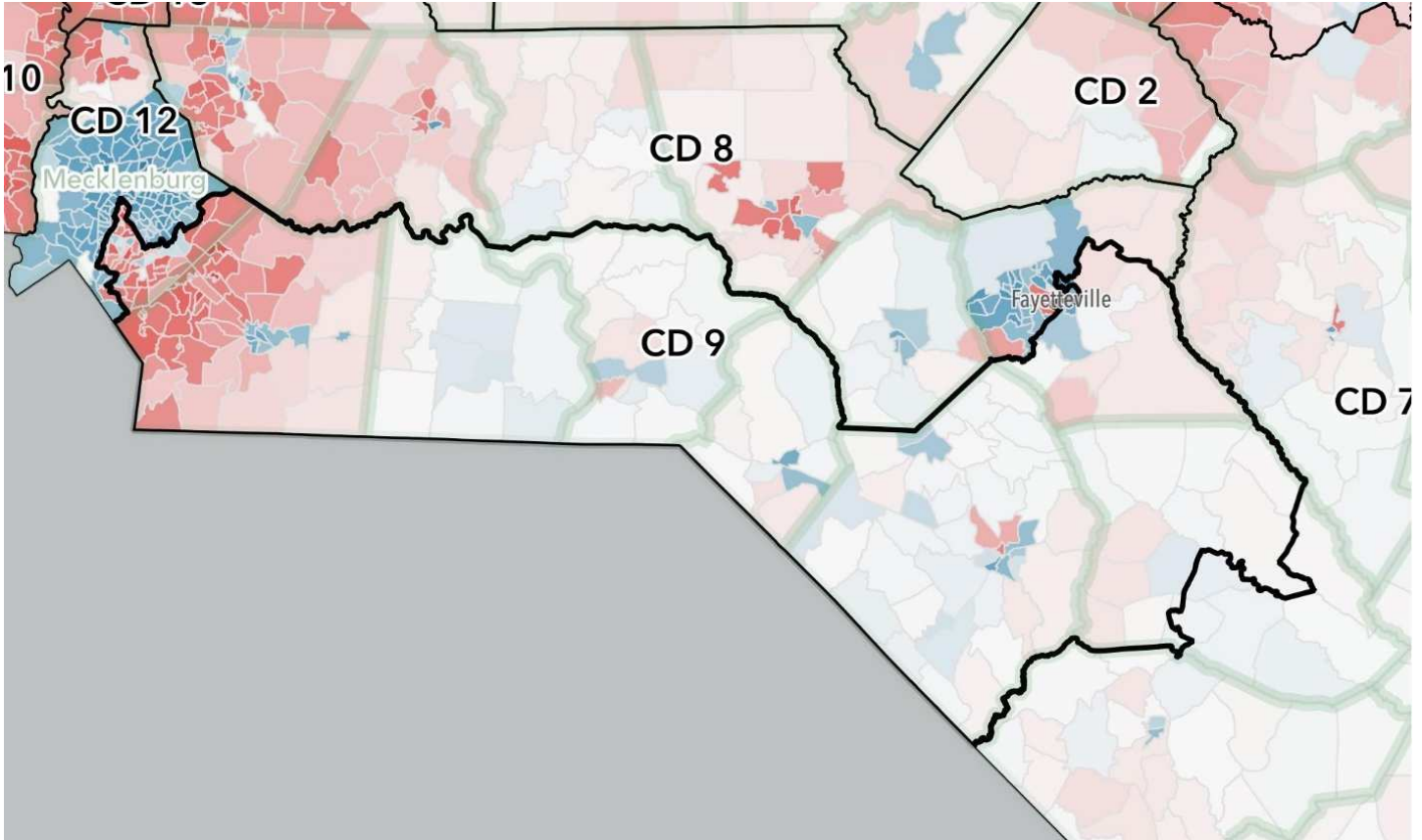
Congressional District 7



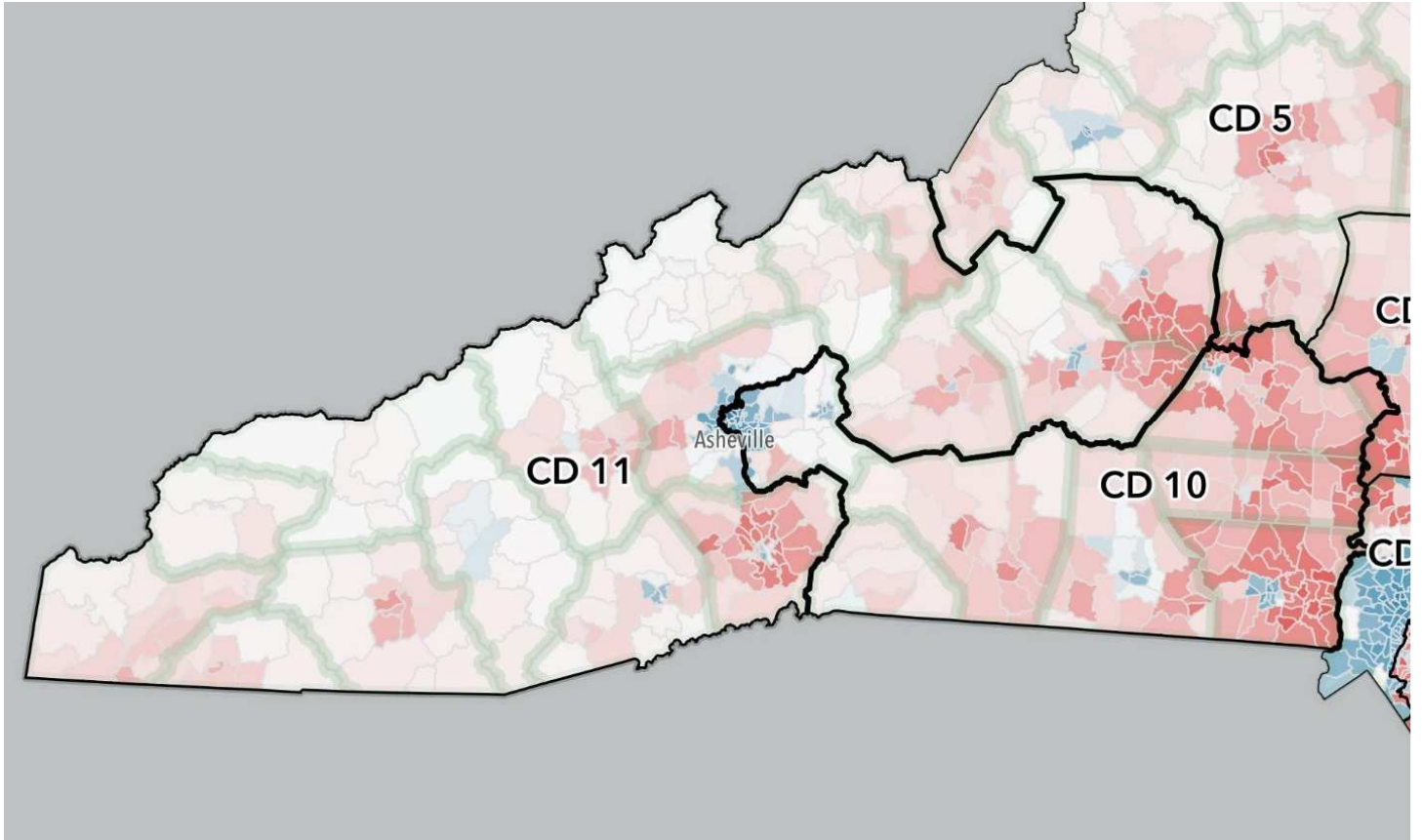
Congressional District 8



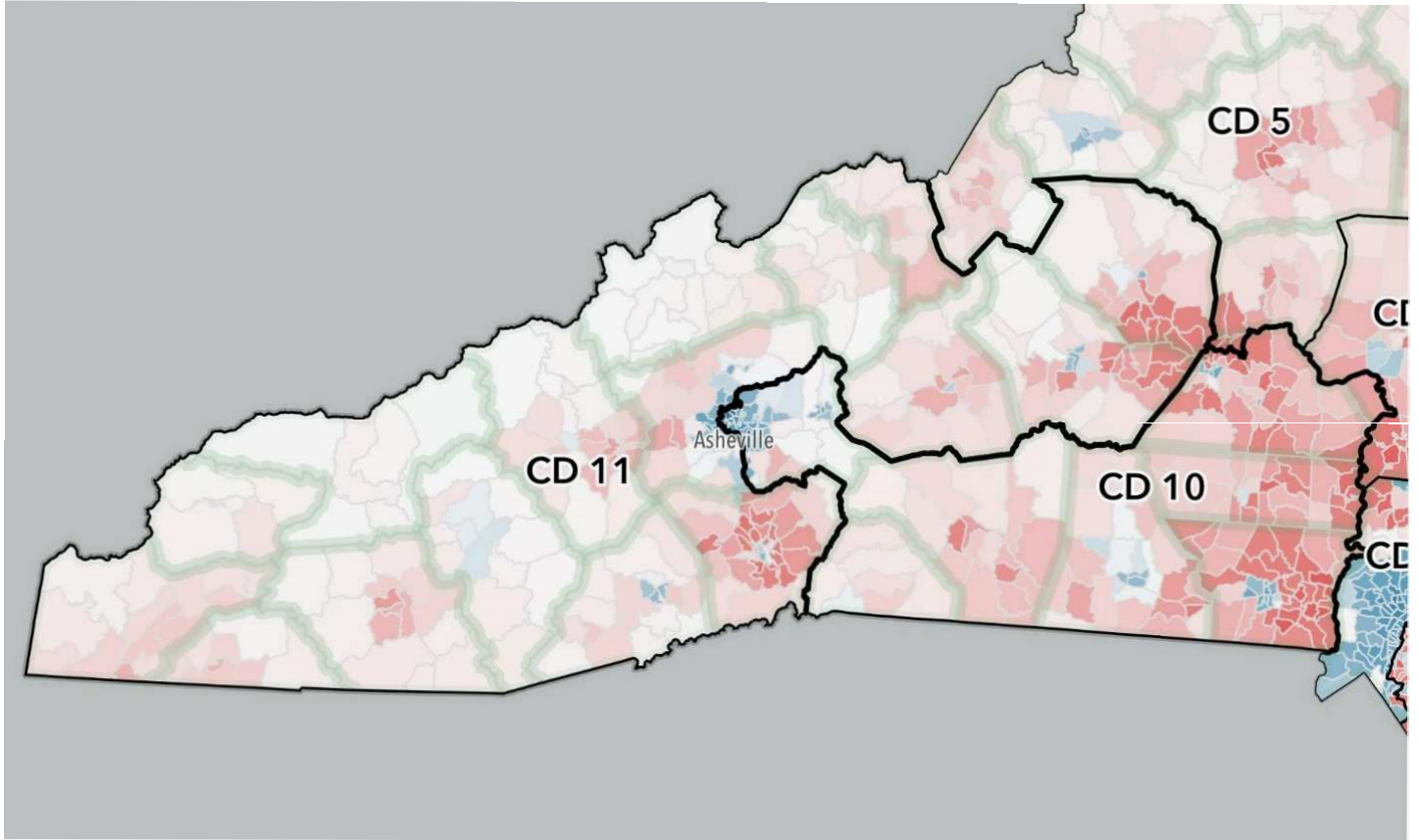
Congressional District 9



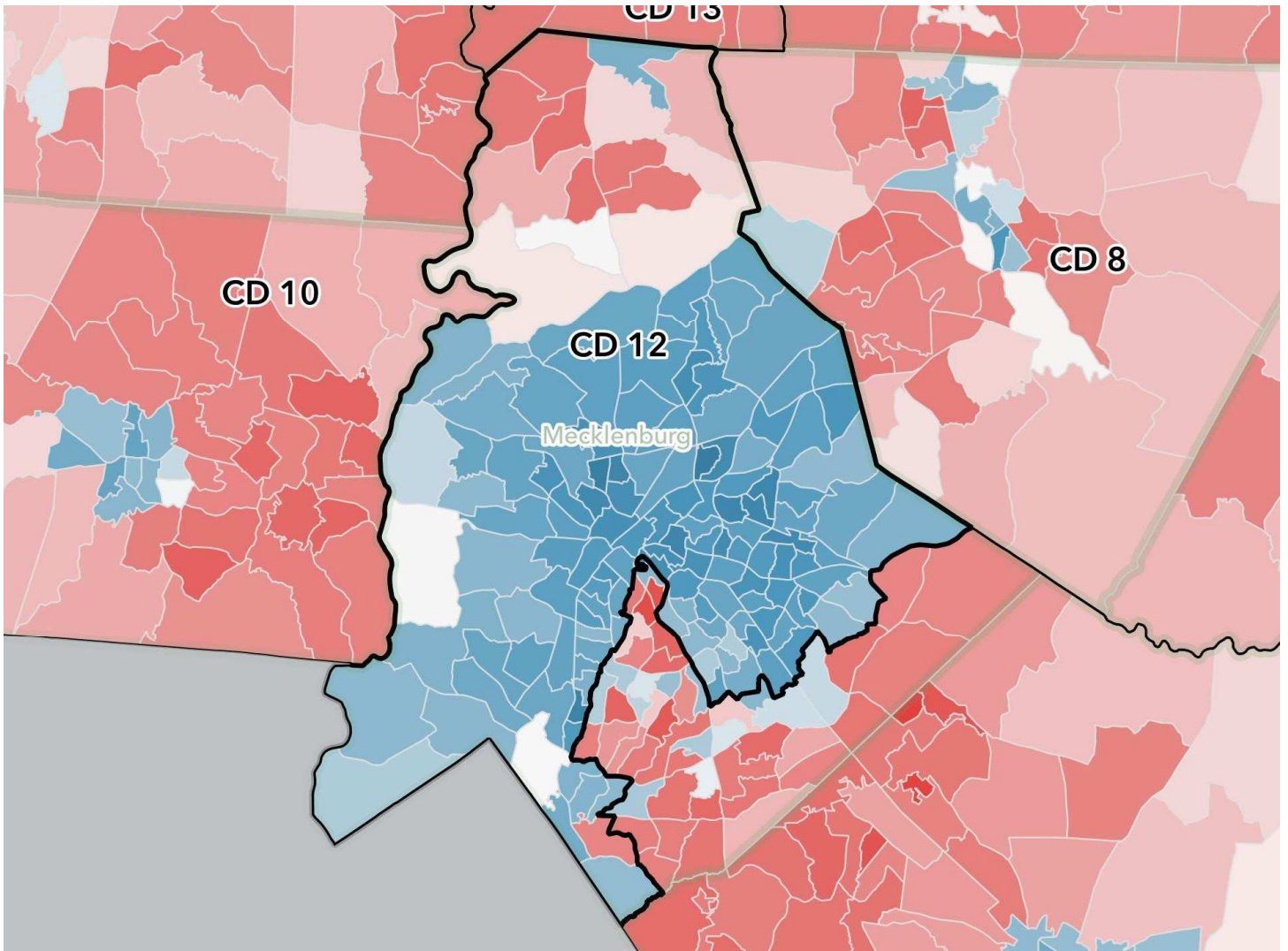
Congressional District 10



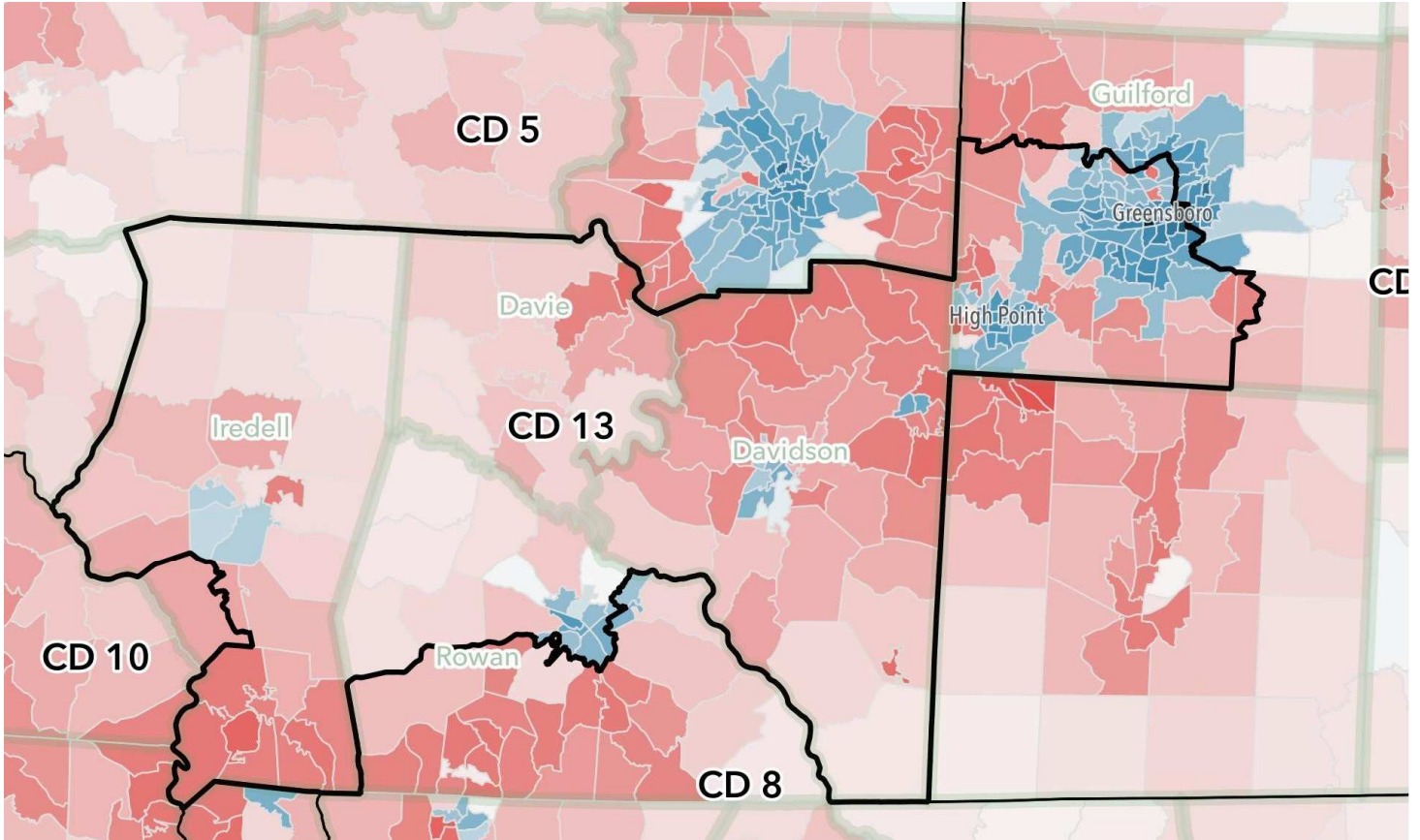
Congressional District 11

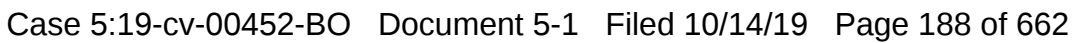


Congressional District 12



Congressional District 13





Splitting of UNC Asheville



Blakeman B. ("Blake") Esselstyn

34 Wall Street · Suite 701 · Asheville, NC 28801-1141

blake@frontwater.com · 828-338-8528

EDUCATION

- University of Pennsylvania, School of Engineering and Applied Science, Master of Computer and Information Technology, 2003; GPA 4.0
- Yale University, Geology & Geophysics and International Studies, Bachelor of Arts, 1996

PROFESSIONAL CERTIFICATIONS

- Geographic Information Systems Professional (GISP), #6946, 2009
- American Institute of Certified Planners (AICP), #026364, 2013

EMPLOYMENT (Teaching positions listed separately)

- Redistricting Consultant, EQV Maps (and as Blake Esselstyn), Asheville, NC, 2016-present
- Principal Consultant, FrontWater, LLC, Asheville, NC, 2015-present
- Urban Planner III – GIS Specialist, City of Asheville Department of Planning and Urban Design, Asheville, NC, 2008-2015
- Urban Planner II, City of Asheville Planning Department, Asheville, NC, 2004-2008
- Independent GIS Consultant, Freelance, Asheville, NC, 2003-2004
- GIS Programmer, Azavea, Inc., Philadelphia, PA, 2002
- Web Support Fellow, University of Pennsylvania, Philadelphia, PA, 2002
- GIS Analyst, Applied Geographics, Inc., Boston, MA, 2001
- GIS Intern, Community and Environmental Spatial Analysis Center, Seattle, WA, 2000
- GIS Analyst, Applied Geographics, Inc., Boston, MA, 2000
- Mapping Technician, Schlosser Geographic Systems, Seattle, WA, 1997
- Digital Mapping Resources Consultant, Social Science Statistical Laboratory at Yale University, New Haven, CT, 1997
- Special Assistant to the CityRoom Coordinator, Neighborhood Partnerships Network, New Haven, CT, 1996-1997
- Lab Monitor, Center for Earth Observation at Yale University, New Haven, CT, 1995

TEACHING EMPLOYMENT

- Adjunct Faculty, Lenoir-Rhyne University, Asheville, NC, 2019
Taught full-semester graduate-level Geographic Information Systems (GIS) course
- Adjunct Faculty, Western Carolina University, Asheville, NC, 2017
Taught full-semester graduate-level GIS course
- GIS Course Assistant, University of Pennsylvania, Philadelphia, PA, 2002-2003
Served as teaching assistant for two undergraduate GIS semester courses
- Teacher, Equity American School, Guatemala City, Guatemala, 1998-1999
Led mathematics department for grades 7-12; taught one technology course
- Teacher, International School of Panama, Panama City, Republic of Panama, 1997-1998
Taught computer programming and mathematics to secondary school students

SPEAKER OR PANELIST

- “Methods and Techniques in Redistricting,” Harvard Geography of Redistricting Conference, Cambridge, MA, 2019
- “Redistricting Software: A new generation of geospatial tools,” North Carolina GIS Conference, Winston-Salem, NC, 2019
- “The Latest Mapping Technology,” Reason, Reform & Redistricting Conference, Duke University, Durham, NC, 2019
- “What are all These Districts? How did We Get Here, and Redistricting Reform,” Grassroots Democracy: A Nonpartisan Voter Education Series, Leicester, NC, 2019
- “Re-GIS-tracting? A new generation of redistricting geo-tools,” Mountain Regional GIS Alliance, Asheville, NC, 2019
- “Representing (mis)representation,” Tapestry Data Storytelling Conference, University of Miami, Miami, FL, 2018
- “A Redistricting Tour,” Democracy in our Hands Conference, Asheville, NC, 2018
- “Dis-tricks: GIS and Public Understanding of Redistricting,” NC ArcGIS Users Group, Asheville, NC, 2018
- “Visual Explanations of Gerrymandering,” Highlands Indivisible, Highlands, NC, 2018
- “Dave’s Redistricting App,” Metric Geometry of Gerrymandering Workshop, University of Texas, Austin, TX, 2018
- “Districting Voter Education Forum,” Democracy North Carolina, Asheville, NC, 2017
- “When GIS leads planners astray,” American Planning Association National Conference, New York, NY, 2017

- “Conveying Uncertainty with GIS,” Azavea, Philadelphia, PA, 2017
- “GISkepticism,” Appalachian State University, Boone, NC, 2017
- “When GIS leads planners astray,” North Carolina Planning Conference, American Planning Association North Carolina Chapter, Asheville, NC, 2016
- “What if the ‘S’ in GIS stood for Skepticism?” Mountain Regional GIS Alliance, Asheville, NC, 2015
- “Open Data? Show Me the Money!” North Carolina GIS Conference, Raleigh, NC, 2015

TEACHING AS SINGLE-CLASS GUEST SPEAKER (On redistricting and/or GIS)

- Lenoir-Rhyne University, Public Policy Processes Course (speaking on redistricting), 2019
- Western Carolina University, Geographic Information Systems Course (speaking on GIS), 2019
- Duke University, Democracy Lab Seminar (speaking on redistricting software tools), 2018
- University of North Carolina Asheville, Political Science: US Elections Course (speaking on redistricting), 2018
- University of North Carolina Asheville, Mathematics: Voting Theory Course (speaking on redistricting), 2018
- Lenoir-Rhyne University, Sustainability Management & Decision Making Course (speaking on GIS/location intelligence), 2018
- Yale University, School of Organization and Management: Business Information Course (speaking on Maptitude—one class + multiple labs), 1997

LITIGATION EXPERIENCE (As GIS expert)

- Expert witness analysis, deposition, and testimony for City of Asheville, in *Jensen v. City of Asheville*, Buncombe County Superior Court, 2009-2010
- Expert witness analysis and testimony for City of Asheville, in *Hall v. City of Asheville*, Buncombe County Superior Court, 2007
- Expert witness analysis and testimony for City of Asheville, in *Arnold v. City of Asheville*, Buncombe County Superior Court, 2005

PUBLIC REDISTRICTING PROJECT EXPERIENCE

- Software operator and presenter, National Conference of State Legislatures Redistricting Seminar: Redistricting Simulation, Providence, RI, 2019

- Hands-on GIS software workshop session leader, Metric Geometry of Gerrymandering Group (MGGG) Conference at the University of Texas, Austin, TX, 2018
- Co-leader of redistricting hackathon, Metric Geometry of Gerrymandering Group (MGGG) Conference at Duke University, Durham, NC, 2017
- Preparation of simulated redistricting plans for Democracy North Carolina's Districting Voter Education Forum, Asheville, NC, 2017
- Hands-on GIS software workshop session assistant, Metric Geometry of Gerrymandering Group (MGGG) Conference at Tufts University, Medford, MA, 2017
- Preparation of redistricting map exhibits used in *Vesilind v. Virginia State Board of Elections* trial, Richmond, VA, 2017
- Redistricting software operator (converting retired jurists' instructions into maps), Duke University and Common Cause NC independent redistricting commission simulation, Raleigh, NC and Winston-Salem, NC, 2016

MEDIA APPEARANCES, OP-EDS, AND CITATIONS

- "With No Supreme Court End to Gerrymandering, Will States Make It More Extreme?" (citation/link of blog article), *New York Times*, June 28, 2019
- "The Supreme Court takes on gerrymandering. A cottage industry wants to prove it's gone too far," *USA Today*, March 26, 2019
- "Gerrymandering: 'Packing' and 'Cracking,' the meat and potatoes of partisan redistricting," *USA Today*, March 25, 2019
- "NC gerrymandering: Turner, McGrady lead reform effort on redistricting" *Asheville Citizen-Times*, February 14, 2019
- "Looking for a Way Forward on Redistricting Reform," *Duke Today*, January 28, 2019
- "Will Asheville try to stop the state from splitting it into districts?" (map citation), *Asheville Citizen-Times*, January 23, 2019
- "Some takeaways from NC's elections," WRAL.com, Nov 7, 2018
- "New Asheville districts are racial gerrymandering, black council members say" *Asheville Citizen-Times*, July 2, 2018
- "Legislature sets up districts for Asheville council, eliminates primaries" (map citation), *Asheville Citizen-Times*, June 27, 2018
- "Van Duyn to back Asheville council districts bill if Senate shifts election dates" (map citation), *Asheville Citizen-Times*, June 21, 2018
- "I Ran the Worst 5K of My Life So I Could Explain Gerrymandering to You," *POLITICO Magazine*, November 15, 2017

- “Event to cover Nov. vote on City Council districts,” *Asheville Citizen-Times*, October 17, 2017
- “Who makes the grade? This week’s editorial report card,” *Asheville Citizen-Times*, June 2, 2017
- “Asheville grows; Charlotte, Raleigh and their suburbs grow faster,” *Asheville Citizen-Times*, May 29, 2017
- “Boundary issues: Where does Asheville end?” (op-ed), *Mountain Xpress*, April 29, 2016
- “For better or worse, Asheville growth inevitable,” *Asheville Citizen-Times*, November 21, 2015
- “St. Lawrence Green no litmus test for voters” (op-ed), *Mountain Xpress*, October 29, 2015

REDISTRICTING AND GIS SOFTWARE EXPERIENCE

- MapInfo (first used 1996)
- Maptitude (first used 1997)
- Esri ArcGIS/ArcInfo/ArcView (first used 2000)
- QGIS (first used 2015)
- Maptitude for Redistricting (first used 2016)
- Dave’s Redistricting App (first used 2016)
- DistrictBuilder (first used 2017)
- Esri Redistricting (first used 2018)
- Districtr (first used 2019)

SELECTED AWARDS (As team member)

- G. Herbert Stout Award for Visionary use of GIS by Local Government, 2009
- International Economic Development Council, Excellence in New Media Initiatives, 2008
- Marvin Collins Outstanding Planning Award for Innovations in Planning Services, Education, and Public Involvement, 2007

ADDITIONAL TRAINING

- Public Data, Public Access, Privacy, and Security: U.S. Law and Policy, Urban and Regional Information Systems Association Certified Workshop, Raleigh, NC, 2015
- An Overview of Open Source GIS Software, Urban and Regional Information Systems Association Certified Workshop, Portland, OR, 2012

- An Introduction to Public Participation GIS: Using GIS to Support Community Decision Making, Urban and Regional Information Systems Association Certified Workshop, Orlando, FL, 2010
- 3-D Geospatial Best Practices and Project Implementation Methods, Urban and Regional Information Systems Association Certified Workshop, Vancouver, BC (Canada), 2006

BOARDS AND COMMISSIONS

- Asheville City Council Appointee to Comprehensive Plan Advisory Committee, 2016-2018

MEMBERSHIPS

- Urban and Regional Information Systems Association (URISA)
- Mountain Regional GIS Alliance (MRGAC)
- American Planning Association (APA)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF
ELISABETH S. THEODORE**

I, Elisabeth S. Theodore, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am a partner with the law firm Arnold & Porter Kaye Scholer LLP and one of the attorneys representing Plaintiffs in this case.
3. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.
4. Attached as Exhibit A is a true and correct copy of the transcript of the Deposition of Thomas B. Hofeller, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 24, 2017).
5. Attached as Exhibit B is a true and correct copy of the transcript of the Deposition of Representative David Lewis, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 26, 2017).

6. Attached as Exhibit C is a true and correct copy of the Redistricting Criteria for the 2016 Congressional Plan adopted by the North Carolina General Assembly Joint Committee on Redistricting on February 16, 2016.

7. Attached as Exhibit D is a true and correct copy of the transcript of proceedings before the North Carolina General Assembly Joint Committee on Redistricting on February 16, 2016.

8. Attached as Exhibit E is a true and correct copy of the transcript of proceedings before the North Carolina General Assembly Joint Committee on Redistricting on February 17, 2016.

9. Attached as Exhibit F is a true and correct copy of the transcript of floor proceedings before the North Carolina House of Representatives on February 19, 2016.

10. Attached as Exhibit G is a true and correct copy of Exhibit 42 to the Second Deposition of Thomas B. Hofeller, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Feb. 10, 2017).

11. Attached as Exhibit H is a true and correct copy of the transcript of the Second Deposition of Thomas B. Hofeller, Volume II, prepared in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Feb. 10, 2017).

12. Attached as Exhibit I is a true and correct copy of the Second Declaration of Thomas B. Hofeller, prepared in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Oct. 26, 2017).

13. Attached as Exhibit J is a true and correct copy of the transcript of the Deposition of Robert A. Rucho, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 25, 2017).

14. Attached as Exhibit K is a true and correct copy of excerpts to Defendants' Responses to Plaintiffs' First Requests for Admission, filed in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Apr. 24, 2017).

15. Attached as Exhibit L is a true and correct copy of excerpts of the transcript of the Trial Testimony of Thomas Hofeller, given in *Harris v. McCrory*, No. 13-cv-949 (M.D.N.C. Oct. 14, 2015).

16. Attached as Exhibit M is a true and correct copy of the Engagement Letter Contract dated February 16, 2016 between Legislative Defendants and Dr. Thomas Hofeller, introduced as an exhibit in *Common Cause v. Rucho*, No. 16-cv-1026.

Respectfully submitted this the 30th day of September, 2019.

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

COMMON CAUSE, et al.,

Plaintiffs,
vs.

ROBERT A. RUCHO, in his official
capacity as Chairman of the North
Carolina Senate Redistricting
Committee for the 2016 Extra
Session and Co-Chairman of the
Joint Select Committee on
Congressional Redistricting,
et al.,

Defendants.

LEAGUE OF WOMEN VOTERS OF NORTH
CAROLINA, et al.,

Plaintiffs,
vs.

ROBERT A. RUCHO, in his official
capacity as Chairman of the North
Carolina Senate Redistricting
Committee for the 2016 Extra
Session and Co-Chairman of the
2016 Joint Select Committee on
Congressional Redistricting,
et al.,

Defendants.

VIDEOTAPED DEPOSITION OF
THOMAS B. HOFELLER

10:05 A.M.
TUESDAY, JANUARY 24, 2017

POYNER SPRUILL
301 FAYETTEVILLE STREET, SUITE 1900
RALEIGH, NORTH CAROLINA

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NC DEPARTMENT OF JUSTICE
BY: ALEC PETERS, ESQ.
JAMES BERNIER, JR., ESQ.
PO Box 629
Raleigh, NC 27602
(919) 716-6400
APeters@ncdoj.gov
JBernier@ncdog.gov

Also Present: Robert A. Rucho
David Lewis
Dalton Oldham, Esq.

The Reporter: Discovery Court Reporters
and Legal Videographers, LLC
BY: DENISE MYERS BYRD, CSR 8340
BRENT TROUBLEFIELD,
VIDEOGRAPHER
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Raleigh, NC 27609
(919) 424-8242
(919) 649-9998 Direct
Denise@DiscoveryDepo.com

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SOCIAL JUSTICE
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<p>1</p> <p>2 27 2016 Contingent Congressional Plan - Adopted, Population and Political data 210</p> <p>3</p> <p>4 28 2016 Redistricting Database Field Key 211</p> <p>5</p> <p>6 29 NCSBOE 11/8/16 Official General Election Results - Statewide 220</p> <p>7 30 Plaintiffs' Notice of Deposition of Thomas Hofeller - League of Women Voters of North Carolina v Rucho 223</p> <p>8 31 Hofeller production of maps Congress 2016 Contingent Bates Nos. DEF000042 - 64 231</p> <p>9</p> <p>10 --o0o--</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>6</p>	<p>1 MS. MACKIE: Caroline Mackie</p> <p>2 representing Common Cause.</p> <p>3 MR. FARR: Tom Farr from the Ogletree</p> <p>4 office in Raleigh representing the defendants in</p> <p>5 both cases.</p> <p>6 MR. STRACH: Phil Strach with Ogletree</p> <p>7 representing the defendants in both case.</p> <p>8 MR. BERNIER: James Bernier, Assistant</p> <p>9 Attorney General representing defendants in both</p> <p>10 cases.</p> <p>11 THOMAS B. HOFELLER,</p> <p>12 having been first duly sworn or affirmed by the</p> <p>13 Certified Shorthand Reporter and Notary Public</p> <p>14 to tell the truth, the whole truth and nothing</p> <p>15 but the truth, testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. Would you state your full name and address for</p> <p>19 the record.</p> <p>20 A. Thomas Brooks Hofeller, 6701 Point Vista Circle,</p> <p>21 Raleigh, North Carolina, 27615.</p> <p>22 Q. How long have you lived in Raleigh,</p> <p>23 Dr. Hofeller?</p> <p>24 A. Since October 14th of 2014.</p> <p>25 Q. Are you currently employed?</p> <p>8</p>

<p>1 A. Well, I'm semiretired, but I don't have a 2 regular job. I do consulting work. 3 Q. What sort of consulting work are you now doing? 4 A. I have -- well, at least I had -- I don't know 5 if I still have it now, but I had a consulting 6 contract with the Republican National Committee, 7 a monthly contract, and I do work in 8 redistricting and court testimony, legal 9 support. 10 Q. For the Republican National Committee and 11 related organizations? 12 A. Mostly not, no. I really do it for other 13 organizations. 14 Q. Other organizations being whom? 15 A. Well, in this case it's the defendant 16 intervenors through the lawyer's office. And I 17 am currently also active in a case in Virginia 18 Besilind, and I've been retained by the lawyer 19 for the defendant intervenors. 20 Q. Is your contract with the Republican National 21 Committee in writing? 22 A. It was in writing a long time ago. It's sort of 23 just gone on a month-to-month basis, and, of 24 course, we've just had the change in 25 administration so I don't know actually what my</p> <p style="text-align: right;">9</p>	<p>1 Could you elaborate on that and tell us what you 2 mean by that. 3 A. Well, in 1965, I was hired by the majority 4 leader I believe in the state senate in 5 California, that's a long time ago, to help 6 develop a database for use in redistricting in 7 California. 8 California had just been ordered by the 9 court to switch to one-person, one-vote, and 10 they needed to do a mid decade redistricting, 11 and it was a project involving the mashing of 12 census tracks to precincts in California so they 13 could build a political and demographic 14 database. 15 In 1970, I was part of a firm which was 16 retained by the California assembly to build a 17 computerized redistricting system for use in the 18 1971 redistricting. This involved creation of 19 software and databases for use in that 20 redistricting. 21 I did essentially the same thing but 22 for a -- through the Rose Institute of State and 23 Local Government in the '80s, built another 24 computerized redistricting system, and I've been 25 drawing plans and looking at -- building</p> <p style="text-align: right;">11</p>
<p>1 status is there at the time. 2 Q. Do you have a copy of that contract? 3 A. Probably somewhere, yes, but I'd have to look 4 for it. 5 Q. Let me ask the court reporter to mark as 6 Hofeller Exhibit 1 a copy of your resume. 7 (WHEREUPON, Plaintiffs' Exhibit 1 was 8 marked for identification.) 9 BY MR. BONDURANT: 10 Q. Do you recognize that as the resume you 11 presented in the Covington case? 12 A. Of course I'd have one more addition to it, 13 which is my participation in the Besilind case 14 in Virginia. 15 Q. The addition being cases in which you are either 16 currently involved or have testified as an 17 expert? 18 A. Well, I haven't testified. I've given an expert 19 report in Besilind. 20 Q. Is it your intention to provide an expert report 21 in this case? 22 A. I haven't been asked to do it yet so I don't 23 know. 24 Q. In your resume you indicate that you've had 25 50 years experience in the redistricting field.</p> <p style="text-align: right;">10</p>	<p>1 databases and looking at databases. 2 I also testified in a trial in 3 Mississippi in the late '70s, Conner V Finch, I 4 think it was, and built another redistricting 5 system. 6 So I've been active in the 7 redistricting field for -- for now going on 8 51 years, I guess. 9 Q. In 1989, you became the redistricting director 10 for the Republican National Committee? 11 A. Actually, that's not true. I was the 12 redistricting director at the RNC first in 1982. 13 I believe January of '82 I became redistricting 14 director and also the director of their computer 15 services division, so I was wearing two hats 16 there for a while. 17 Q. What was your -- what were your duties as 18 redistricting director for the RNC beginning in 19 1982? 20 A. Well, we were just finishing up the 1980 21 redistricting cycle, and I was responsible for 22 aiding and assisting Republican organizations 23 across the country in fulfilling their 24 redistricting needs. It was really kind of the 25 tail end of that process then.</p> <p style="text-align: right;">12</p>

<p>1 As computer services director, I ran</p> <p>2 the IT shop for the Republican National</p> <p>3 Committee in Washington, DC.</p> <p>4 Q. And what did the IT shop consist of as far as</p> <p>5 redistricting was concerned?</p> <p>6 A. Most of it was data work, building databases and</p> <p>7 lending technical assistance to the players in</p> <p>8 the redistricting process as needed.</p> <p>9 Q. How did those databases relate to the</p> <p>10 redistricting process?</p> <p>11 A. Well, in redistricting, you essentially have two</p> <p>12 sets of data that have to operate in tandem:</p> <p>13 One is political data, which are the results of</p> <p>14 elections, and also of registration, and that</p> <p>15 has to be matched and merged with data which</p> <p>16 comes from the United States Census Bureau which</p> <p>17 gives the demographics of the areas. And</p> <p>18 there's quite a bit of work involved in melding</p> <p>19 the two types of data together.</p> <p>20 Q. When you say political data, could you tell us</p> <p>21 precisely what you mean.</p> <p>22 A. Results of elections and registration numbers.</p> <p>23 Q. Any other political data? Is there a definition</p> <p>24 of the term?</p> <p>25 A. The only thing I can think of right offhand</p> <p style="text-align: right;">13</p>	<p>1 best predictor of how a particular geographic</p> <p>2 area is likely to vote --</p> <p>3 A. Yes.</p> <p>4 Q. -- in a future election?</p> <p>5 Is that an industry standard among</p> <p>6 people who are engaged in map drawing for</p> <p>7 political parties on either side?</p> <p>8 A. Yes. Well, I don't know -- I can't tell you</p> <p>9 about the other side. I haven't drawn districts</p> <p>10 for partisan Democrats except in very limited</p> <p>11 circumstances, but in most cases I think experts</p> <p>12 across the country would agree that past</p> <p>13 elections are the best, if not imperfect,</p> <p>14 indicator of what future results may be.</p> <p>15 Q. Is there any more reliable indicator of future</p> <p>16 election results than how a particular</p> <p>17 geographic area voted in past elections in your</p> <p>18 opinion?</p> <p>19 A. Not really, no.</p> <p>20 Q. Is your opinion based not only on your own</p> <p>21 experience but social science research,</p> <p>22 political scientists and others who sample that</p> <p>23 sort of thing?</p> <p>24 A. Certainly any that I've talked to or read have</p> <p>25 said that, but, yes. The people who actually</p> <p style="text-align: right;">15</p>
<p>1 would be residences of incumbents, but that's</p> <p>2 really part of the voter file.</p> <p>3 Q. When you say results of elections, you're</p> <p>4 referring to how a particular geographic area</p> <p>5 voted in primary or general elections?</p> <p>6 A. Yes.</p> <p>7 Q. Do you -- for your purposes in your database</p> <p>8 work, do you use primary election results or</p> <p>9 general election results or both?</p> <p>10 A. Generally we use general election results,</p> <p>11 usually a presidential, U.S. Senate, House of</p> <p>12 Representatives, statewide votes such as</p> <p>13 governor, lieutenant governor, attorney general.</p> <p>14 Some states have more elected officials. Other</p> <p>15 states have less. And also, of course,</p> <p>16 legislative results. We're also interested, of</p> <p>17 course, in registration numbers too.</p> <p>18 Q. For what purpose do you use election results?</p> <p>19 A. To determine how areas that are being drawn into</p> <p>20 new districts or taken out of new districts vote</p> <p>21 and to try and make an estimate of what</p> <p>22 electoral success may be in newly formed</p> <p>23 districts, although it doesn't always end up</p> <p>24 being exactly as you predicted.</p> <p>25 Q. Are past election results in your opinion the</p> <p style="text-align: right;">14</p>	<p>1 draw the districts want that information more</p> <p>2 than anything else. And I think people who are</p> <p>3 voting on the districts, the people who may be</p> <p>4 authorizing these plans or passing the</p> <p>5 redistricting statutes would all want to know</p> <p>6 what the past election results are in the area</p> <p>7 that they're going to get a new plan.</p> <p>8 Q. So in your opinion, the most important</p> <p>9 information in trying to give one party or the</p> <p>10 other a partisan advantage in the redistricting</p> <p>11 process would be past election results?</p> <p>12 A. If that was what you were trying to do, yes.</p> <p>13 Q. And when you are engaged by the Republican Party</p> <p>14 or by Republican legislators in the state, that</p> <p>15 is your objective, isn't it, to draw districts</p> <p>16 that will give that party the maximum advantage</p> <p>17 in state legislative or congressional elections?</p> <p>18 A. Not always.</p> <p>19 Q. What other instances are you asked to draw</p> <p>20 districts?</p> <p>21 A. There are other criteria at play in drawing</p> <p>22 districts. First you have one-person, one-vote,</p> <p>23 which is a federal requirement. You have the</p> <p>24 requirements of the Voting Rights Act, which are</p> <p>25 also federal. There are traditional</p> <p style="text-align: right;">16</p>

<p>1 redistricting criteria such as respect for 2 communities of interest, counties in particular, 3 cities. You have compactness. You have 4 contiguity. So there are other factors that 5 play off against the political data.</p> <p>6 Q. But as far as attempting to achieve a partisan 7 advantage for the party whom you were hired to 8 represent, is political data the principal data 9 on which you would rely to achieve that 10 objective?</p> <p>11 A. I'm not sure I agree with the premise of your 12 question. I really never have been hired by a 13 political party to actually draw lines, so I 14 can't quite -- maybe you could ask that a 15 different way.</p> <p>16 Q. When you're employed by a law firm representing 17 legislators, such as Senator Rucho or 18 Representative Lewis, were you employed to give 19 political considerations, principal 20 consideration in drawing congressional districts 21 in North Carolina?</p> <p>22 A. Well, again, when I've -- usually when I've been 23 hired by a law firm, it hasn't been to actually 24 draw districts. It's been to provide litigation 25 support and analysis.</p> <p style="text-align: right;">17</p>	<p>1 A. I'm sorry. Does this start at Line 10?</p> <p>2 Q. Line 16.</p> <p>3 A. I'm sorry.</p> <p>4 Q. "Would you describe yourself as the principal 5 architect?"</p> <p>6 A. I guess I said I would.</p> <p>7 Q. Yes.</p> <p>8 A. It depends on what you mean by architect too.</p> <p>9 Q. Well, what you meant by architect when you 10 answered the question was that you were the 11 principal person who was responsible for 12 drafting the plan that was ultimately adopted by 13 the North Carolina General Assembly in 2011.</p> <p>14 A. Okay. Well, what I've always said is that an 15 architect draws or designs a building -- excuse 16 me -- according to the specifications by the 17 person who wants the building built.</p> <p>18 So if you say that that's -- if you 19 define it as such, I was the architect, but I 20 wasn't building what I thought was needed to be 21 built. I was building what the --</p> <p>22 Q. You were working at the direction of some 23 other --</p> <p>24 MR. FARR: Can he finish his answer, 25 please.</p> <p style="text-align: right;">19</p>
<p>1 Q. But you did draw the districts in 2011. You 2 were the principal architect.</p> <p>3 A. In 2011?</p> <p>4 Q. Yes, with the congressional districts.</p> <p>5 A. I did draft districts, yes.</p> <p>6 Q. And you were the principal architect?</p> <p>7 A. Well, people have stylized me that way, but...</p> <p>8 Q. Haven't you testified to that effect previously?</p> <p>9 A. I believe my memory is that I've testified to 10 the fact that it was my job in the -- in the 11 redistricting to be kind of the principal 12 gatekeeper/scorekeeper of what was being drawn.</p> <p>13 So I would typically maintain the 14 current copy of the map, and to some degree I 15 was the architect, but, of course, I didn't make 16 the decisions as to where the districts would 17 actually go. That decision rested with the 18 chairman in North Carolina, Chairman Lewis and 19 Chairman Rucho as directors of the two 20 committees as to what would actually be done in 21 the end.</p> <p>22 Q. Let me show you Page 20, starting at Line 12 23 through Line 16, of your deposition in Harris v 24 McCrory taken on May 6, 2014. If you would read 25 the question and your answer.</p> <p style="text-align: right;">18</p>	<p>1 THE WITNESS: Excuse me. As the 2 architect, I was designing the plan in 3 accordance with the specifications that the 4 legislature wanted, mainly represented by the 5 chairman of the two committees.</p> <p>6 BY MR. BONDURANT:</p> <p>7 Q. You operated under the instructions given to you 8 by Senator Rucho and Representative Lewis who 9 were the co-chairmen of the joint committee of 10 the senate and house in 2011?</p> <p>11 A. Yes.</p> <p>12 Q. And by specifications, you mean the instructions 13 which they gave you?</p> <p>14 A. That's true.</p> <p>15 Q. And all of those instructions were oral?</p> <p>16 A. Yes.</p> <p>17 Q. There were no instructions given to you in 18 writing?</p> <p>19 A. No.</p> <p>20 Q. There were no -- there's no paper trail against 21 which we can evaluate your description of the 22 instructions?</p> <p>23 A. I don't believe so, no.</p> <p>24 Q. And that was a deliberate choice on your part?</p> <p>25 A. If I received instructions on what I was to do,</p> <p style="text-align: right;">20</p>

<p>1 the instructions came from the people who wanted</p> <p>2 it done. It would have been their choice as to</p> <p>3 how they wanted to give me the instructions, not</p> <p>4 mine.</p> <p>5 Q. But you advised them not to give you</p> <p>6 instructions in writing, to do so orally?</p> <p>7 A. I don't recollect that.</p> <p>8 Q. And when you received instructions, you made no</p> <p>9 written record or notes of the instructions?</p> <p>10 A. No.</p> <p>11 Q. Let me go forward with your history. According</p> <p>12 to your resume --</p> <p>13 A. Are we done with this exhibit?</p> <p>14 Q. Yes. You may need it again, but...</p> <p>15 You've told us you became a</p> <p>16 redistricting director in 1982. According to</p> <p>17 your resume, you were again made redistricting</p> <p>18 director for the Republican National Committee</p> <p>19 from March 1989 to November 1993.</p> <p>20 A. I believe that's not right.</p> <p>21 Q. If you'll turn to Page 7 of your resume. You</p> <p>22 list Republican -- National Republican</p> <p>23 Congressional Committee, redistricting director.</p> <p>24 A. That's correct, but it's not the Republican</p> <p>25 National Committee.</p> <p style="text-align: right;">21</p>	<p>1 The National Committee has a much wider</p> <p>2 interest in redistricting involving state</p> <p>3 legislatures and Congress.</p> <p>4 Q. Was your focus in that capacity on achieving as</p> <p>5 much of a partisan advantage for the Republican</p> <p>6 members of Congress as possible in the states?</p> <p>7 A. I think you have to understand that as a</p> <p>8 redistricting --</p> <p>9 Q. Is that a "yes" or a "no"?</p> <p>10 A. It's a "no" the way you asked it.</p> <p>11 Q. Do you want to explain?</p> <p>12 A. Yes. The National Republican Congressional</p> <p>13 Committee does not draw districts and go into a</p> <p>14 state and say we've drawn your districts, here</p> <p>15 they are, all you need to do is enact this plan.</p> <p>16 You wouldn't be there very long if you did that.</p> <p>17 So our job, as was a lot of the jobs of</p> <p>18 the National Republican Committee, was to</p> <p>19 prepare Republican stakeholders for the</p> <p>20 redistricting process ahead of time and to</p> <p>21 support them in their needs to go through the</p> <p>22 process. So it was more an advisory role than</p> <p>23 it was anything else.</p> <p>24 The districts -- congressional</p> <p>25 districts in the United States are drawn by the</p> <p style="text-align: right;">23</p>
<p>1 Q. Thank you for the correction.</p> <p>2 What is the difference between the</p> <p>3 Republican National Committee and the Republican</p> <p>4 Congressional Committee?</p> <p>5 A. The Republican National Committee is the</p> <p>6 official committee of the Republican Party. It</p> <p>7 puts on the conventions. Its primary function,</p> <p>8 actually, is putting on the nominating</p> <p>9 conventions. I believe legally -- I'm not an</p> <p>10 attorney so I don't know exactly that, but it is</p> <p>11 the Party.</p> <p>12 The National Republican Congressional</p> <p>13 Committee is the political committee of the</p> <p>14 Republican members of Congress, the caucus, and</p> <p>15 its duty is mainly to support electing and</p> <p>16 supporting Republicans in elections.</p> <p>17 Q. What were your duties as redistricting director</p> <p>18 for the Republican Congressional Committee in</p> <p>19 the March '89 through November '93 period?</p> <p>20 A. I would describe them as functionally the same,</p> <p>21 but the client was different. The National</p> <p>22 Republican Congressional Committee is</p> <p>23 overwhelmingly involved with the reelection and</p> <p>24 election of members to Congress from the</p> <p>25 Republican Party.</p> <p style="text-align: right;">22</p>	<p>1 states, not by the national parties or national</p> <p>2 organizations.</p> <p>3 Q. Did you assist any states in drafting</p> <p>4 congressional plans during the -- that election</p> <p>5 cycle?</p> <p>6 A. I don't rightly remember one way or the other.</p> <p>7 That's been quite a few years.</p> <p>8 Q. Then according to your resume, you were again</p> <p>9 the redistricting director beginning in</p> <p>10 July 1999 through March 2003.</p> <p>11 What were your duties during that</p> <p>12 period?</p> <p>13 A. Well, just for the record, I was redistricting</p> <p>14 director for the Republican National Committee</p> <p>15 at that time, not the National Congressional</p> <p>16 Committee.</p> <p>17 Q. So in the '89 period, you were redistricting</p> <p>18 director for the congressional committee; in the</p> <p>19 '99 through 2003 period, you were the</p> <p>20 redistricting director for the Republican</p> <p>21 National Committee?</p> <p>22 A. That's correct.</p> <p>23 Q. What were your duties as redistricting director</p> <p>24 for the Republican National Committee?</p> <p>25 A. Again, I came on board in '99, I believe it was</p> <p style="text-align: right;">24</p>

<p>1 like April, but I'm not sure. I'd have to look 2 at my resume. Again, as I described to you 3 already, the first task that I was involved in 4 was getting the states ready, the stakeholders 5 ready for the redistricting process.</p> <p>6 A lot of people have actually forgotten 7 about redistricting. Some have never been 8 through it before. Some actually were glad to 9 have forgotten about it, but there's a lot of 10 education that needs to be done in terms of 11 database building, in terms of acquisition of 12 computer equipment and software and in terms of 13 the status of the law. Redistricting law 14 changes a lot between decades and to some degree 15 the politics of redistricting. So we would go 16 to states and help people when they wanted help.</p> <p>17 I believe in that decade we also put on 18 a redistricting conference. We also monitored 19 the census. Before I got that job, I was 20 actually the staff director of the U.S. House 21 Subcommittee on the Census, and we monitored the 22 activities of the Census Bureau, educated people 23 about that data, where to get it, what they 24 needed to do, in some cases emphasized to them 25 that they needed to get as good a count as they</p> <p style="text-align: right;">25</p>	<p>1 involved. There are lots of interests involved. 2 And so we took what they wanted to have as their 3 goals and would say -- advise them on what would 4 be wise and what would be unwise and how they 5 could get it done.</p> <p>6 BY MR. BONDURANT:</p> <p>7 Q. Did you assist state legislators in drafting 8 plans during the '99 to 2003 period that you 9 were redistricting director for the Republican 10 National Committee?</p> <p>11 A. Again, it's been a long time and I don't 12 remember the specifics of where I went and what 13 I did.</p> <p>14 Q. Did you assist the North Carolina Republicans in 15 drafting plans for the -- in the 2009 -- excuse 16 me -- in the 1999/2003 election cycle?</p> <p>17 A. That would be the 2001 redistricting cycle?</p> <p>18 Q. Yes.</p> <p>19 A. If my memory serves me correctly, the plans in 20 2001 were drafted by the Democrats and the 21 majority in the legislature.</p> <p>22 Q. That was not my question.</p> <p>23 Did you assist the Republican members 24 of the legislature in drafting plans for that 25 cycle?</p> <p style="text-align: right;">27</p>
<p>1 could of all their citizens, not all their 2 citizens, actually all of their inhabitants, and 3 get people actually thinking actively about 4 redistricting.</p> <p>5 It's many times hard to draw -- get 6 their attention to it because --</p> <p>7 Q. Did you draft plans --</p> <p>8 A. Excuse me. I'm not finished yet. Do you want 9 me to --</p> <p>10 Q. If you want to take the time, go ahead.</p> <p>11 A. Okay. Alright. I just said as the 12 redistricting process unfolds, people come up 13 with problems and with issues, and it was our 14 job to assist them and make them as successful 15 in accomplishing their redistricting goals as 16 they could be.</p> <p>17 Q. And the redistricting goals as far as the 18 Republicans were concerned was to gain maximum 19 partisan advantage?</p> <p>20 MR. FARR: Objection to the form.</p> <p>21 THE WITNESS: I wouldn't say that 22 that's actually a correct premise. There are 23 many things going on in redistricting and not 24 always is partisan advantage the top goal. 25 There are other criteria that are</p> <p style="text-align: right;">26</p>	<p>1 A. Those would have been sample plans, yes.</p> <p>2 Q. Again in 2009 to 2011 you became a redistricting 3 consultant for the Republican National 4 Committee. What was the difference between your 5 duties as a redistricting consultant versus 6 redistricting director in the prior election 7 cycle?</p> <p>8 A. I wouldn't describe it as being much different. 9 I think it was more the terms of my employment 10 than it was the duties, a difference in duties.</p> <p>11 It was to their advantage and to my 12 advantage to come in as a consultant in that 13 election -- or in that redistricting cycle 14 rather than as an employee.</p> <p>15 Q. Did you have a written contract with the RNC as 16 a redistricting consultant?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have a copy of that contract?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you recall what that contract prescribed your 21 duties to be?</p> <p>22 A. I have no recollection of the actual specifics 23 of the contract.</p> <p>24 Q. In April 2011 you entered into a separate 25 contract with the State Government Leadership</p> <p style="text-align: right;">28</p>

<p>1 Foundation, correct?</p> <p>2 A. Okay. Yes.</p> <p>3 Q. Do you have a copy of that contract?</p> <p>4 A. I might, but I don't have it certainly readily</p> <p>5 at hand.</p> <p>6 (WHEREUPON, Plaintiffs' Exhibit 2 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. Dr. Hofeller, I've asked the court reporter to</p> <p>10 mark Hofeller Exhibit 2. Can you identify it?</p> <p>11 A. That's a paper that I wrote while I was at the</p> <p>12 RNC.</p> <p>13 Q. Do you know approximately what the date of this</p> <p>14 paper is? It appears to be undated.</p> <p>15 A. It would have been, I believe, either 2009 or</p> <p>16 2010. I don't actually recall the date. I</p> <p>17 think it was published in a publication of the</p> <p>18 National Committee.</p> <p>19 Q. At the conclusion of the paper, the paper</p> <p>20 describes you as one of the GOP's preeminent</p> <p>21 redistricting experts. Would you agree with</p> <p>22 that description?</p> <p>23 A. Are you talking about the part in italics?</p> <p>24 Q. Yes.</p> <p>25 A. Let me read through it.</p> <p style="text-align: right;">29</p>	<p>1 Again, one of the problems that I think</p> <p>2 both parties have in terms of redistricting is</p> <p>3 it's a process that only happens once a decade,</p> <p>4 very seasonal, and usually politicians and</p> <p>5 political operatives are focused on the problem</p> <p>6 at hand, usually the next election and a lot of</p> <p>7 other issues. Members of the legislature have a</p> <p>8 constant stream of legislation that's going</p> <p>9 through their chambers, and it's very difficult</p> <p>10 for them to -- excuse me -- to focus on a</p> <p>11 process that isn't right on top of them.</p> <p>12 And one of the problems with</p> <p>13 redistricting is that it requires a lot of</p> <p>14 preparation. It's not something you can turn to</p> <p>15 after the election, directly preceding the line</p> <p>16 drawing and say, oh, we're going to have</p> <p>17 redistricting, we have to get ready now.</p> <p>18 If you wait until that happens, you</p> <p>19 won't be ready and you'll have a lot of</p> <p>20 difficulty.</p> <p>21 So it was, I guess, probably best</p> <p>22 described as a wake-up piece, pay attention,</p> <p>23 this is coming up, you need to focus.</p> <p>24 Q. And in the second full paragraph, you say in the</p> <p>25 last sentence:</p> <p style="text-align: right;">31</p>
<p>1 Q. Certainly.</p> <p>2 A. Now that I've read it again, can you repeat your</p> <p>3 question. I'm sorry.</p> <p>4 Q. Would you agree with the statement that you are</p> <p>5 the GOP's -- one of the GOP's preeminent</p> <p>6 redistricting experts?</p> <p>7 A. I guess I would, yes.</p> <p>8 Q. Is there anyone with the GOP, including all of</p> <p>9 its iterations and committees, that you regard</p> <p>10 as more expert in partisan redistricting than</p> <p>11 you?</p> <p>12 MR. FARR: Objection to the form.</p> <p>13 THE WITNESS: I don't think I describe</p> <p>14 myself as a preeminent expert in partisan</p> <p>15 redistricting.</p> <p>16 I describe myself as it is describes --</p> <p>17 as it reads. It speaks for itself.</p> <p>18 There are some people across the</p> <p>19 country who are pretty knowledgeable in the</p> <p>20 field. I've just been, I think, at it longer</p> <p>21 than most of them.</p> <p>22 BY MR. BONDURANT:</p> <p>23 Q. Why did you write this paper?</p> <p>24 A. You know, that's been many years ago so I have</p> <p>25 to speculate on the exact motivations.</p> <p style="text-align: right;">30</p>	<p>1 "Why are these state-level contests</p> <p>2 so important to the GOP? It is because</p> <p>3 it is in the states where the results of</p> <p>4 the 2010 census will be used to redraw</p> <p>5 the boundaries of congressional</p> <p>6 districts which will be used in the 2012,</p> <p>7 2014, 2016, 2018 and 2020 elections. The</p> <p>8 outcome of this battle will determine the</p> <p>9 electoral playing field for the next</p> <p>10 decade."</p> <p>11 Then in the next two sentences you say:</p> <p>12 "If the GOP wins big at the state</p> <p>13 and legislative level, it can be more</p> <p>14 assured of retaking and keeping control</p> <p>15 of the U.S. House. These election</p> <p>16 contests in 2010 are 'the hidden national</p> <p>17 elections of 2010 and beyond' and will</p> <p>18 determine GOP success in the 2012</p> <p>19 elections following redistricting."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And you were trying to convince the Republican</p> <p>23 National Committee and the Republican Party to</p> <p>24 focus on the 2010 state elections as a method of</p> <p>25 achieving control of the House of</p> <p style="text-align: right;">32</p>

<p>1 Representatives in Congress for the next decade. 2 Isn't that fair? 3 A. I don't know that I'd state it exactly as you 4 stated it, but I would just say that anybody who 5 knows anything about redistricting knows that 6 the congressional districts are drawn in the 7 states and that the states will draw the lines 8 and in many ways that will control the shapes of 9 the districts and who will be in control in 10 Congress over the next decade. 11 So I think that most of the readers of 12 this already were aware of this, but, once 13 again, it was trying to get them focused on it a 14 little earlier than they might want to focus on 15 it. 16 Q. On Page 2, in the incomplete paragraph at the 17 top of the page, you say: 18 "Due to McCain-Feingold, it is now 19 illegal for the RNC to raise and spend 20 non-federal dollars to fund technical -- 21 critical technical and legal operations, 22 and other national GOP organizations 23 have been unwilling, or unsuccessful, in 24 filling this funding void." 25 Do you see that?</p> <p style="text-align: right;">33</p>	<p>1 the consultant in 2009, correct? 2 A. I was consultant to that office, yes. 3 Q. On the third page, in the last full paragraph 4 above the map, you say: "This year's 5 elections" -- you're referring to the 2010 6 election cycle -- "could result in the GOP's 7 full line-drawing control of as many as 151 8 seats or as few as 16," correct? 9 A. Well, that's what I said then. It turned out a 10 lot differently. 11 Q. Well, we'll see how it turned out. 12 On the last page you again emphasize 13 that "A switch of as few as 77 seats out of 14 4,889 could have a huge impact on both parties' 15 redistricting fortunes." 16 MR. FARR: What page is that, Emmet? 17 MR. BONDURANT: Page 6. 18 THE WITNESS: I'm sorry, I just don't 19 see it. Oh, here it is, the incomplete 20 paragraph at the top. 21 Yes, that's really a -- well, I guess 22 that's true. 23 BY MR. BONDURANT: 24 Q. The point you were making is that if the 25 Republicans, through whatever organizations,</p> <p style="text-align: right;">35</p>
<p>1 A. I do. 2 Q. And the point you were making there is that the 3 subset of GOP organizations weren't willing to 4 fund the sort of technical support that you felt 5 was necessary to prepare for the 2010 election 6 cycle and take advantage of it? 7 MR. FARR: Objection. 8 You can answer. 9 THE WITNESS: I don't think it was a 10 matter of will. It was a matter of resources. 11 McCain-Feingold changed the way that 12 politics was funded in the country radically, 13 and I think we were trying to explain to the 14 states that they couldn't depend on the RNC to 15 be able to give them the level of monetary 16 support that they may have received in the 17 previous redistricting cycle because of the 18 limitations of fundraising. 19 BY MR. BONDURANT: 20 Q. In the next sentence you said: 21 "The RNC had the foresight to 22 reactivate its redistricting office in 23 early 2009, but it has had to use federal 24 dollars to do so." 25 That is the office of which you were</p> <p style="text-align: right;">34</p>	<p>1 could switch as few as 77 state legislative 2 seats out of almost 5,000, that could have a 3 huge impact on the makeup of the congressional 4 delegation in the House of Representatives? 5 A. Well, that's just a fact. 6 Q. And that's the point you were trying to make to 7 the Republican leadership? 8 A. I didn't say that. I said the point I was 9 trying to make is that you better pay attention 10 to elections out in the states or state 11 legislatures, in other statewide offices because 12 it's going to have a national impact. 13 Sometimes it's hard to get people to 14 think about that because they may be saying, 15 well, we're interested in congressional 16 elections this next year and how those elections 17 turn out. I'm saying there's another dimension 18 to this year's elections. 19 Q. And it's a long-term dimension that would apply 20 to the entire decade: 2012, 2014, 2016, 2018, 21 2020? 22 A. Yes, that's true. 23 (WHEREUPON, Plaintiffs' Exhibit 3 was 24 marked for identification.) 25 BY MR. BONDURANT:</p> <p style="text-align: right;">36</p>

<p>1 Q. Could you identify Deposition Exhibit 3, a</p> <p>2 PowerPoint presentation at which you were</p> <p>3 present on June 7, 2009.</p> <p>4 A. Yes.</p> <p>5 Q. Were you a presenter in that PowerPoint</p> <p>6 presentation?</p> <p>7 A. I was. I don't -- actually, I don't know how</p> <p>8 much Congressman Westmoreland said and I said.</p> <p>9 I was present, and I'm sure I spoke to it.</p> <p>10 Q. You were the principal author of this</p> <p>11 PowerPoint, weren't you?</p> <p>12 A. Yes.</p> <p>13 Q. And does that date of June 7 help you date your</p> <p>14 article that we identified as Hofeller</p> <p>15 Exhibit 2? Was Hofeller Exhibit 2 written</p> <p>16 before or after?</p> <p>17 A. I just have no recollection. I don't know.</p> <p>18 Q. It doesn't help you date it one way or the</p> <p>19 other?</p> <p>20 A. No, really not.</p> <p>21 Q. On the page that ends with the Bates number</p> <p>22 RSLC1535, you're emphasizing the importance of</p> <p>23 Republicans being at the table to get either</p> <p>24 full control or split control of the</p> <p>25 redistricting process.</p> <p style="text-align: right;">37</p>	<p>1 redistricting, so it's --</p> <p>2 Q. That wasn't my question.</p> <p>3 MR. FARR: Can he finish.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. Can you draw the lines for the best interest of</p> <p>6 the Party, a partisan advantage over the other</p> <p>7 party if you're in control?</p> <p>8 MR. FARR: Excuse me, Emmet. I would</p> <p>9 like to ask you to let him finish his answer.</p> <p>10 MR. BONDURANT: I would like him to be</p> <p>11 responsive and not make a speech.</p> <p>12 MR. FARR: I think he was answering</p> <p>13 your question.</p> <p>14 MR. BONDURANT: Can you read the</p> <p>15 question back.</p> <p>16 (Record Read.)</p> <p>17 THE WITNESS: I think the answer would</p> <p>18 be you could if that was your goal.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. On the page numbered 47, you break down which</p> <p>21 party has control of how many legislative seats</p> <p>22 currently.</p> <p>23 A. 1547?</p> <p>24 Q. Yes.</p> <p>25 A. No, that's not correct. We're not talking about</p> <p style="text-align: right;">39</p>
<p>1 A. I'm sorry, I'm still trying to find the page.</p> <p>2 Q. Look at 1535. It's --</p> <p>3 A. Oh, I'm sorry. I didn't see the numbers at the</p> <p>4 bottom.</p> <p>5 This PowerPoint frame speaks for</p> <p>6 itself. There are three statuses that you can</p> <p>7 find yourself -- either party can find itself in</p> <p>8 in a redistricting process in an individual</p> <p>9 state. You either have full control, which</p> <p>10 means you can draw the lines that you think are</p> <p>11 best for the state; you have split control,</p> <p>12 which could result in a deadlock situation where</p> <p>13 either the two parties' operatives have to come</p> <p>14 to a compromise or it can end up in the courts.</p> <p>15 Q. When you say best for the state, if you're in</p> <p>16 full control, you really mean best for the party</p> <p>17 that is in full control?</p> <p>18 A. No. I said best for the state.</p> <p>19 Q. You don't think that it also in your terminology</p> <p>20 meant that if you were in full control, speaking</p> <p>21 to a Republican audience, you could draw the</p> <p>22 lines in a way that would be best for the Party?</p> <p>23 A. I think I already answered that question earlier</p> <p>24 in this deposition where I said there are many</p> <p>25 other factors that come in to play in</p> <p style="text-align: right;">38</p>	<p>1 legislative seats here.</p> <p>2 Q. You're talking about congressional seats?</p> <p>3 A. That's true.</p> <p>4 Q. So the PowerPoint presentation headed 2010</p> <p>5 Reapportionment, Partisan Control of Process, as</p> <p>6 of 2010, based on the 2001 apportionment, the</p> <p>7 GOP controlled the apportionment of 107 seats,</p> <p>8 the Democrats controlled 124 seats.</p> <p>9 A. Again, that's not a precisely correct question.</p> <p>10 Q. Can you give me a precisely correct answer?</p> <p>11 A. No, then.</p> <p>12 Q. What is the information you're attempting to</p> <p>13 portray under "Partisan Control of Process" when</p> <p>14 you list GOP? What is the 107?</p> <p>15 A. I believe -- and I haven't seen this PowerPoint</p> <p>16 for a long time, but I believe what I'm saying</p> <p>17 here is that in the states in which the -- this</p> <p>18 is a result of the 2008 elections, not the 2010</p> <p>19 elections, so all the elections up to the point</p> <p>20 where I did the PowerPoint, GOP would have full</p> <p>21 control of the redistricting process in states</p> <p>22 which contained 107 congressional seats.</p> <p>23 Q. And likewise, the Democrats would have control</p> <p>24 of both houses in states that had 124 seats?</p> <p>25 A. No. They would have control of the process.</p> <p style="text-align: right;">40</p>

<p>1 Each state -- states have different processes 2 for redistricting. So, again, that's not 3 precisely true. The Democrats would be -- would 4 have control in states that contained 124 seats. 5 Q. And there would be 161 seats in which the 6 parties divided control -- controlling one house 7 or the other in the state legislature? 8 A. No, that's not precisely true because not in all 9 states does the legislature do the 10 redistricting. 11 So I would say that this was our read 12 as to which party would be in control of the 13 line-drawing process, and in this case it would 14 be split, but it doesn't say how it was split or 15 how it was done. 16 Q. The states in which the legislature does not 17 control redistricting are the so-called 18 commission states? 19 A. Yes. 20 Q. And you list them as controlling 36 seats? 21 A. Yes. 22 Q. And then there's seven states that have only one 23 representative so they are elected at large and 24 there is no redistricting? 25 A. That's true.</p> <p style="text-align: right;">41</p>	<p>1 BY MR. BONDURANT: 2 Q. Can you identify Exhibit 4. 3 A. That is a press release which was released by 4 the Republican State Leadership Committee on 5 February 19, 2010. 6 Q. Did you have any role in drafting that press 7 release? 8 A. I don't really remember. 9 Q. Is that press release consistent with the 10 article which you had written previously urging 11 Republican leaders to pay attention to the 2010 12 redistricting, the article that we identified as 13 Hofeller Exhibit 2? 14 MR. FARR: Have you had a chance to 15 read this exhibit? 16 THE WITNESS: No. I really have to 17 read -- I'd have to study -- I don't know which 18 one predated the other one. This was not 19 written by me. It was written by the people who 20 controlled communications in that organization. 21 So if you want to give me time, I can 22 read through it and refresh myself with it. 23 BY MR. BONDURANT: 24 Q. I can ask you some questions about it and 25 perhaps save us some time.</p> <p style="text-align: right;">43</p>
<p>1 Q. If you'll turn to the page numbered 1560, you 2 say in your PowerPoint "Key Factors in Election 3 Targeting, Within +to -5 of Control." 4 What is the message you're conveying to 5 your audience there? 6 A. Actually, that frame conveys a whole series of 7 messages. Do you want me to go through them 8 all? 9 Q. Let me try this: You're suggesting here that 10 the Republicans target states in which they have 11 an opportunity to shift legislative control from 12 the Democrats of one house or both to the 13 Republican Party? 14 A. That's the first bullet, and the answer to that 15 would be you could look at that as a starting 16 point to where you thought committing, again, 17 national money to the states would have a good 18 chance of switching control of a legislative 19 chamber. Of course, there are other states that 20 have lots of representatives where the number 21 may be plus or minus a lot higher number. 22 That's just one message in this PowerPoint frame 23 there. There are other messages too. 24 (WHEREUPON, Plaintiffs' Exhibit 4 was 25 marked for identification.)</p> <p style="text-align: right;">42</p>	<p>1 You're familiar with the -- what became 2 known as the REDMAP Project? 3 A. Yes. 4 Q. You as a consultant worked to further the REDMAP 5 Project? 6 A. I don't know -- you have to tell me what you 7 mean by further it. 8 Q. Assist in carrying it out. 9 A. Okay. It was a portion of the REDMAP Project 10 too. I think the main interest of the RSLC had 11 was looking at places where they would pinpoint 12 their resources in the upcoming election. 13 My job was more one, once again, 14 preparing stakeholders for the process that was 15 coming up. 16 Q. The purpose of the REDMAP Project was to win 17 state legislative seats that would have a 18 critical impact on redistricting in 2011. 19 A. That's what they say, yes. 20 Q. And the redistricting primarily was 21 congressional redistricting? 22 A. No. The RSLC is interested in legislative 23 redistricting and legislative elections. That's 24 its role. That's as defined from the 25 Republican -- the National Republican</p> <p style="text-align: right;">44</p>

<p>1 Congressional Committee.</p> <p>2 Q. If you would go down to the third full</p> <p>3 paragraph, after reciting the people who were</p> <p>4 going to be leading it:</p> <p>5 "The four were active in the</p> <p>6 formulation of the American Majority</p> <p>7 Project (AMP) which was started to help</p> <p>8 state legislative races around the</p> <p>9 country that would affect congressional</p> <p>10 redistricting and decided the joining</p> <p>11 their efforts with the RSLC would have</p> <p>12 the most impact."</p> <p>13 A. I have to read the piece to understand the</p> <p>14 premise. I don't know what "the four were</p> <p>15 active" means. I have to read the piece to</p> <p>16 know.</p> <p>17 Q. Well, if you need to read a one-page document,</p> <p>18 go right ahead.</p> <p>19 MR. FARR: It's a two-page document.</p> <p>20 It's quite a few paragraphs.</p> <p>21 THE WITNESS: I would like to read</p> <p>22 every document that I'm testifying about.</p> <p>23 MR. FARR: And you can read it, Tom.</p> <p>24 MR. SPEAS: I don't think the record</p> <p>25 reflects that Senator Rucho and Representative</p> <p style="text-align: right;">45</p>	<p>1 BY MR. BONDURANT:</p> <p>2 Q. I wasn't asking you about the document. I was</p> <p>3 asking about your knowledge of the REDMAP</p> <p>4 strategy.</p> <p>5 Would you read the question back.</p> <p>6 (Record Read.)</p> <p>7 MR. FARR: And I object to the form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: Again, REDMAP was --</p> <p>10 BY MR. BONDURANT:</p> <p>11 Q. Can you answer the -- the question has a</p> <p>12 yes-or-no answer.</p> <p>13 MR. FARR: Let him answer the question.</p> <p>14 BY MR. BONDURANT:</p> <p>15 Q. You can answer yes or no and then you can</p> <p>16 explain.</p> <p>17 A. Ask the question again. I'm sorry.</p> <p>18 (Record Read.)</p> <p>19 THE WITNESS: That's correct in part.</p> <p>20 BY MR. BONDURANT:</p> <p>21 Q. What part about it is incorrect?</p> <p>22 A. The other goal, of course, was just to win</p> <p>23 control of state legislatures, which is their</p> <p>24 primary mission. Aside from that, they were</p> <p>25 looking at legislative chambers that would</p> <p style="text-align: right;">47</p>
<p>1 Lewis are here and have been here since the</p> <p>2 beginning. I think it should. And also</p> <p>3 Mr. Oldham is here and has been here since the</p> <p>4 beginning, and Mr. Peters is here now.</p> <p>5 You agree with that, Tom?</p> <p>6 MR. FARR: Yes. Thank you for that</p> <p>7 clarification.</p> <p>8 THE WITNESS: All right. So in the</p> <p>9 paragraph above, we're talking about the senior</p> <p>10 advisors to the REDMAP Project, I believe, four</p> <p>11 individuals, not including myself, and they were</p> <p>12 active in the formation of the AMP, which I</p> <p>13 don't really remember until I saw this document</p> <p>14 because they were interested in the -- in the</p> <p>15 fact that legislative races would have an impact</p> <p>16 on congressional redistricting.</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. In fact, the REDMAP strategy was a strategy of</p> <p>19 the Republican State Legislative Committee to</p> <p>20 win Republican control of state legislatures</p> <p>21 that would have the largest impact on</p> <p>22 congressional redistricting, correct?</p> <p>23 MR. FARR: Objection.</p> <p>24 THE WITNESS: Again, I think the</p> <p>25 document speaks for itself.</p> <p style="text-align: right;">46</p>	<p>1 change the control of the redistricting process.</p> <p>2 Q. And the REDMAP strategy of gaining control of</p> <p>3 state legislatures that would have the greatest</p> <p>4 impact on congressional redistricting was the</p> <p>5 strategy which you were proposing in your</p> <p>6 article "The Looming Redistricting Storm, How</p> <p>7 will the Republican Party Fare" that we marked</p> <p>8 as Exhibit 2.</p> <p>9 A. Again, I don't know which document predated</p> <p>10 which other document. So it was talking</p> <p>11 essentially about the same subject, yes.</p> <p>12 Does that satisfy you?</p> <p>13 Q. My real question: Was REDMAP your idea or was</p> <p>14 it somebody else's?</p> <p>15 A. No, it wasn't my idea.</p> <p>16 Q. Who is the principal author?</p> <p>17 A. The leadership of the RSLC.</p> <p>18 Q. And who would you identify personally to have</p> <p>19 been the brains behind the REDMAP strategy if it</p> <p>20 were not you?</p> <p>21 A. The leadership of the RSLC.</p> <p>22 Q. And what individuals would you name as being</p> <p>23 principally the authors of the REDMAP strategy?</p> <p>24 A. Well, that would have been Chairman Gillespie</p> <p>25 and Vice-Chairman Tom Reynolds, I'm sure advised</p> <p style="text-align: right;">48</p>

<p>1 by their political team. They had their own 2 political team. 3 Q. Were there any other individuals who in your 4 opinion would be more knowledgeable about the 5 origins of the REDMAP strategy than those two 6 individuals? 7 A. I think they had an executive director at the 8 time. I just don't remember who it was. 9 Q. Was that Chris Jankowski? 10 A. I believe so, yes. 11 Q. What was his role in developing the REDMAP 12 strategy, if you know? 13 A. I don't know. 14 Q. Was his role more influential than yours? 15 A. I was working for them, so I would have to say, 16 yes, his role was more influential. 17 MR. FARR: Emmet, we'd like to take 18 breaks about every hour. When you have a 19 chance, we'd like to take a break. 20 MR. BONDURANT: Let's go through this 21 document and then we'll... 22 (WHEREUPON, Plaintiffs' Exhibit 5 was 23 marked for identification.) 24 BY MR. BONDURANT: 25 Q. Dr. Hofeller, could you identify Exhibit 5.</p> <p style="text-align: right;">49</p>	<p>1 Q. And you were an integral part as a consultant of 2 the efforts to redistrict in 2011 on behalf of 3 the Republican State Legislative Committee and 4 its foundation? 5 MR. FARR: Objection to the form. 6 THE WITNESS: I would have to say that 7 I've already described to you what my role was. 8 So if you're talking about their 9 fundraising strategy, which this particular 10 exhibit is related to, I was not involved in the 11 fundraising. 12 BY MR. BONDURANT: 13 Q. You were involved in the map drawing? 14 A. Again, in terms of the RSLC, I was not hired to 15 be a map drawer. In fact, my contract with the 16 RSLC ran out, I believe, before map drawing 17 really started to any degree or extent in the 18 country. 19 Q. Let's go through this and be sure we are 20 understanding the REDMAP Project. 21 The second full page begins: 22 "Congressional Redistricting: 23 Drawing Maps for the Next Five Elections. 24 Question: How do we create 20 to 25 new 25 Republican Congressional districts over</p> <p style="text-align: right;">51</p>
<p>1 A. It's a PowerPoint made by the RSLC. I don't 2 really remember it. I don't even remember if I 3 ever actually saw this before. 4 Q. So you don't know whether you saw it before or 5 not? 6 A. I don't, no. 7 Q. Let's see if we can refresh your recollection. 8 A. Okay. Thank you. 9 Q. If you'll turn to the second page, the first 10 heading is "Congressional Redistricting: 11 Drawing Maps for the Next Five Elections." 12 MR. FARR: Before we have any questions 13 on that, could he just have time to go through 14 the document. 15 MR. BONDURANT: Sure. Absolutely. 16 MR. FARR: Thank you. 17 THE WITNESS: Okay. 18 BY MR. BONDURANT: 19 Q. You've had an opportunity to review Exhibit 5? 20 A. Yes. Thank you. 21 Q. Is it an accurate description of the REDMAP 22 strategy as you knew it? 23 A. I guess so. I guess I would have to say yes. 24 Again, it wasn't my document. So I think it's 25 primarily a fundraising piece.</p> <p style="text-align: right;">50</p>	<p>1 the next five cycles and solidify a 2 Republican Congressional majority?" 3 Was that the objective of the REDMAP 4 strategy, principal objective? 5 A. I guess so. I don't really know for sure 6 because, again, I was just hired to do certain 7 parts of it. 8 Q. And on the next page, it gives an answer to the 9 question of how that could be accomplished. 10 "Control of the redistricting process." 11 That is precisely what you advocated in 12 your article marked as Exhibit 2, if you can 13 control the redistricting -- control the 14 legislature, you could control the redistricting 15 process. 16 MR. FARR: Objection. 17 THE WITNESS: Not precisely true, no. 18 That's -- the premise of your question is not 19 correct. 20 You may -- that may be a component. 21 There are other components to controlling the 22 redistricting process. 23 I think that the -- once again, this 24 PowerPoint frame speaks for itself. Yes, if 25 you -- if you have control of more chambers in</p> <p style="text-align: right;">52</p>

<p>1 the right places, you will do better in 2 redistricting. I think that goes without 3 saying. 4 BY MR. BONDURANT: 5 Q. Now, if you'll turn to the page ending in 6 numbers 446, it is headed "What will it take in 7 2010?" and then it compares the cost of 20 to 25 8 new Republican congressional districts for the 9 next five cycles through redistricting, with the 10 cost of competing in 20 to 25 competitive swing 11 or Democratic leaning congressional districts 12 for the next five cycles. 13 Do you see that? 14 A. Yes. 15 Q. Had you seen that rationale before for the 16 REDMAP Project? 17 A. I have not been reticent to state the premise 18 that it's much more expensive to elect 19 Republicans in seats that are more balanced 20 politically or Democrat controlled than it is to 21 win elections in seats that lean Republican or 22 are Republican seats. 23 And that -- again, this is a 24 fundraising piece so what they're -- they 25 believed they were trying to do here is to say</p> <p style="text-align: right;">53</p>	<p>1 Democratic seat. In that case you would be at a 2 better advantage. I mean, that's just 3 elementary politics. 4 MR. BONDURANT: Do you want to take 5 this break now? 6 MR. FARR: Sure. Thank you, Emmet. 7 THE VIDEOGRAPHER: Off record at 8 11:17 a.m. 9 (Brief Recess.) 10 THE VIDEOGRAPHER: On record at 11 11:31 a.m. 12 (WHEREUPON, Plaintiffs' Exhibit 6 was 13 marked for identification.) 14 BY MR. BONDURANT: 15 Q. Dr. Hofeller, can you identify Exhibit 6? 16 A. Let me just review it quickly. 17 Q. Certainly. 18 A. In answer to your question, it's a -- I guess a 19 political report from REDMAP on the progress of 20 their project. 21 Q. It's dated July 2010? 22 A. Yes. 23 Q. Do you recall whether you saw this report at or 24 about the time it was published? 25 A. No. I mean, no, I don't recall.</p> <p style="text-align: right;">55</p>
<p>1 that an investment by donors of this amount of 2 money could save a lot more money in the future. 3 And again, they just pulled up 31.5 million 4 versus 255 million I guess mostly based on what 5 they perceive would be the amount of money that 6 would be spent on congressional races which, of 7 course, continues to rise as do all election 8 costs. 9 Q. As you were working as a consultant for the 10 Republican State Legislative Committee during 11 this period of time, did you have that rationale 12 explained to you in these terms? 13 A. Well, I already knew it. I didn't need to have 14 it explained to me. 15 Q. So you agreed with this analysis? 16 A. I agree with the premise of the slide which is 17 it is more efficient money-wise to put yourself 18 in the position to draw better seats for 19 yourself than to campaign in seats where you are 20 at a disadvantage. 21 Q. Or competitive seats? 22 MR. FARR: Objection to the form. 23 THE WITNESS: Again, in some cases it 24 might not be a competitive versus a Republican 25 seat. It might be a competitive seat versus the</p> <p style="text-align: right;">54</p>	<p>1 Q. In the ordinary course as the consultant 2 employed by the Republican State Legislative 3 Committee, would you expect to have seen these 4 reports routinely? 5 A. Not necessarily, no. 6 Q. I want to ask you about the couple paragraphs 7 here. In the introduction, it says: 8 "The REDistricting MAjority Project 9 (REDMAP) is a program of the Republican 10 State Leadership Committee (RSLC) 11 dedicated to winning Republican control 12 of state legislatures that will have the 13 most impact on Congressional 14 redistricting 2011." 15 Do you see that? 16 A. I do. 17 Q. You were familiar with that as being the 18 objective of the REDMAP Project in 2010? 19 A. It was an objective, yes. 20 Q. And in the last full paragraph, it says: 21 "Impact on Congressional 22 Redistricting: If and when Republicans 23 are successful in the races addressed in 24 this report, the Republican Party will 25 have an impact on the redrawing of</p> <p style="text-align: right;">56</p>

<p>1 numerous Congressional districts across 2 the country, an effect that will be felt 3 for the next decade." 4 Let me stop there. You were familiar 5 with that would be the effect of the REDMAP 6 Project if it were successful? 7 A. Yes. If it were successful, yes. 8 Q. Would you agree that that seems very similar to 9 that which you were advocating in your article 10 marked as Exhibit 2? 11 A. Yes, I'd say so. Again, I don't know -- I don't 12 know if this predates or postdates my article so 13 I can't tell you. I just don't remember. 14 Q. And based on your experience, you knew that if 15 the Republicans could control the redistricting 16 of congressional districts, the effect would be 17 felt for the entire decade, not merely for one 18 or two elections? 19 A. The effect of the redistricting process in 20 general is felt for five following elections, of 21 course, unless there are lawsuits. 22 Q. Intervening court rulings? 23 A. Which are numerous. 24 Q. But absent intervening court rulings, the effect 25 of a partisan redistricting in 2012 would be</p> <p style="text-align: right;">57</p>	<p>1 you did. 2 MR. FARR: But we didn't get copies of 3 the exhibits. 4 MR. THORPE: They are responsive 5 production to the subpoena. 6 MR. FARR: So we didn't -- when the 7 documents were produced to you, you didn't 8 provide copies of those documents to us prior to 9 this deposition? 10 MR. BONDURANT: I thought they had been 11 produced. In fact, I thought the RSLC gave them 12 to you simultaneous with us. 13 MR. THORPE: Yes, that's right. 14 MR. FARR: I don't remember, but it 15 could be true. We'll check. 16 MR. BONDURANT: If you don't have them, 17 I will guarantee you'll get copies. 18 MR. FARR: Okay. 19 MR. BONDURANT: And intended -- I had 20 assumed that the RSLC had produced them to 21 everybody simultaneously. 22 MR. FARR: And, Emmet, that's possible, 23 but I don't remember it so we'll just check. 24 MR. BONDURANT: Yeah. 25 MR. FARR: If it didn't happen, then</p> <p style="text-align: right;">59</p>
<p>1 felt for the entire decade? 2 A. Again, the -- any redistricting's effects are 3 felt through the entire period until the next 4 line-drawing process, so that would be 2021 in 5 this case. 6 Q. Did you agree with the last sentence that 7 Republicans have an opportunity to create 20 to 8 25 new Republican congressional districts 9 through the redistricting process over the next 10 five election cycles, solidifying a Republican 11 House majority? 12 A. I'm just going on to read the rest of the 13 paragraph, if you don't mind. 14 Q. Sure, go right ahead. I'll get to the rest of 15 it too, but... 16 MR. FARR: Emmet, one other question 17 about this line of questioning. Is it a good 18 time for me to ask you a question? 19 MR. BONDURANT: Sure. 20 MR. FARR: I'm wondering, was this -- 21 these exhibits from RSL, were these obtained by 22 you through a subpoena? 23 MR. BONDURANT: Yes. 24 MR. FARR: Did we get copies of those? 25 MR. BONDURANT: It's my understanding</p> <p style="text-align: right;">58</p>	<p>1 I'm sure it was inadvertent. 2 BY MR. BONDURANT: 3 Q. Do you need the question read back? 4 A. Probably. Yes. I'm sorry. 5 Q. That's all right. 6 (Record Read.) 7 THE WITNESS: I would agree on the 8 premise that you understand that this is not my 9 document. I didn't write it. I haven't had a 10 chance to look at the conclusions that they've 11 made. 12 The prediction of what seats are 13 possible to win and what the results will be is 14 rather subjective analysis, particularly before 15 the elections. 16 So the author of this piece thought 17 there were 20 to 25 congressional districts that 18 would be made more favorable to the Republicans, 19 so I agree the article says that. I haven't had 20 a chance to look at their state-by-state 21 analysis and say if it agreed with my analysis. 22 They might have been more optimistic than I 23 might have been. They might have been more 24 pessimistic. I just don't know. 25 BY MR. BONDURANT:</p> <p style="text-align: right;">60</p>

<p>1 Q. But you understood at the time, that is, in the 2 summer of 2010, that this was the optimistic 3 projection of the Republican State Legislative 4 Committee that it can win 20 to 25 new 5 congressional seats by targeting state 6 legislative races?</p> <p>7 A. I'm sorry, I just stated just before that that 8 was their prediction, and I don't know --</p> <p>9 Q. My question is: Were you aware that was their 10 understanding and prediction at the time?</p> <p>11 A. That it was their understanding and prediction?</p> <p>12 Q. Yeah.</p> <p>13 A. I don't know that I really was, no. I may have 14 made my own estimate as to what was possible, 15 but I don't -- I have -- I don't remember this 16 piece. I didn't write it. So all I can say is 17 this was their prediction which they put out. I 18 was busy doing what I was hired to do and this 19 was not it.</p> <p>20 Q. But you were hired to work for this committee.</p> <p>21 A. Obviously if I was hired I worked for the 22 committee, yeah.</p> <p>23 Q. And you were hired to work for this committee on 24 the redistricting that would follow the 2010 25 election.</p> <p style="text-align: right;">61</p>	<p>1 have on congressional elections if Republicans 2 could gain control of more state legislatures in 3 the 2010 election?</p> <p>4 A. To that I can say, yes, I did have an estimate 5 if they gained control. That's a more generic 6 question than what you asked before.</p> <p>7 Q. What was your estimate of the number --</p> <p>8 A. It was wrong, I can tell you that.</p> <p>9 Q. What was your estimate --</p> <p>10 A. I don't remember exactly. I had a piece of 11 paper that I had written notes down on. I don't 12 remember exactly what it says. I don't have 13 that piece of paper any more.</p> <p>14 Q. Do you remember generally what your estimate --</p> <p>15 A. I think this was generally in the ballpark, yes.</p> <p>16 Q. When you say this was generally in the ballpark, 17 20 to 25 gain of Republican seats was in the 18 ballpark?</p> <p>19 A. It was certainly a possibility, yes.</p> <p>20 Q. Was it consistent with your estimate?</p> <p>21 A. Again, I don't have my estimates in front of me 22 so I don't know. I think it was generally -- it 23 was generally consistent with my estimate that 24 if we had a high degree of success in the 2010 25 elections for the state legislatures and other</p> <p style="text-align: right;">63</p>
<p>1 A. No. I was hired to help stakeholders to prepare 2 for the redistricting process and be ready to do 3 the work they wanted to do, whatever they wanted 4 to do.</p> <p>5 Q. And by stakeholders, you mean Republican 6 legislators in states that were going to be 7 responsible for the redistricting after the 2010 8 census?</p> <p>9 A. Well, there are actually numerous stakeholders, 10 among which are Republican caucuses in various 11 state legislatures.</p> <p>12 Q. You were not assisting Democratic state 13 legislators in preparing for the 2010 census?</p> <p>14 A. No, I don't believe so. No. I don't know, they 15 might have seen this fundraising piece or these 16 pieces and taken action.</p> <p>17 Q. You mentioned your own estimates. Do you recall 18 what your estimates were of the likely effect of 19 the REDMAP Project if it were successful on the 20 congressional redistricting?</p> <p>21 A. I don't know how much of it you could have 22 actually attributed to the REDMAP Project. That 23 was just one of the factors that went into this 24 process of doing better in the 2010 elections.</p> <p>25 Q. Did you have an estimate of what effect it would</p> <p style="text-align: right;">62</p>	<p>1 statewide offices, which were also important, 2 that we would do better in redistricting.</p> <p>3 And I don't think that this kind of a 4 gain is -- was, again, generally consistent with 5 what I thought. Again, this is a very 6 subjective process. They have a chart on the 7 second page which goes through certain states 8 and makes that analysis.</p> <p>9 Q. And did you go through that chart in the summer 10 of 2010 or a similar one?</p> <p>11 A. I don't recall ever having seen this particular 12 piece.</p> <p>13 MR. FARR: Tom, let him finish his 14 question.</p> <p>15 THE WITNESS: I'm sorry.</p> <p>16 BY MR. BONDURANT:</p> <p>17 Q. With specific reference to North Carolina, the 18 chart on Page 2 indicates that the objective of 19 the REDMAP Project was to neutralize the 20 Democratic advantage in both the North Carolina 21 House and Senate.</p> <p>22 Do you see that?</p> <p>23 A. Yeah, I see it.</p> <p>24 Q. Did you understand that to be an objective of 25 the REDMAP Project in the summer of 2010?</p> <p style="text-align: right;">64</p>

<p>1 A. Again, I didn't write this piece. This is a 2 specific objection, but I'm sure that the 3 Democrat -- or the REDMAP would want to try and 4 enhance the Republican numbers in both houses of 5 the state legislature.</p> <p>6 Q. With specific reference to North Carolina, you 7 knew that the objective was neutralize the 8 Democratic advantage in North Carolina, take 9 over control?</p> <p>10 A. Well, you can neutralize the Democratic 11 advantage by winning one chamber, not both 12 chambers. So it would -- it would be the goal 13 of the RSLC to elect more Republican members to 14 either of the chambers in the North Carolina 15 legislature, and if they had control of one 16 chamber, then the Democrats would not be able to 17 draw the maps they wanted. They might have to 18 compromise.</p> <p>19 Q. Did you understand in your work as a consultant 20 for the Republican State Legislative Committee 21 that the goal of the REDMAP Project was to win 22 traditionally swing states so they could be 23 redrawn by the Republicans?</p> <p>24 A. Again, you have to define what you mean by a 25 swing state. There are many definitions of a</p> <p style="text-align: right;">65</p>	<p>1 their mission, which was to enhance the number 2 of Republican legislators, and that they were 3 focused in on chamber control more than anything 4 else and the byproduct for that chamber control 5 is an effect on the redistricting process.</p> <p>6 Q. From your recollection, you would not disagree 7 with the statement that the goal of the project 8 was to win control in traditionally swing states 9 so that at least half of them would be redrawn 10 by the Republican Party?</p> <p>11 MR. FARR: Objection.</p> <p>12 THE WITNESS: Well, in order to redraw 13 half the seats --</p> <p>14 BY MR. BONDURANT:</p> <p>15 Q. Do you agree -- do you agree or disagree with 16 the statement?</p> <p>17 A. I guess, no. The way you asked the question, my 18 answer would be no.</p> <p>19 Q. Are you saying you think the statement is 20 incorrect when it says if REDMAP achieves its 21 goal, nearly half of the traditionally swing 22 states will be redrawn by Republicans before the 23 2012 election cycle?</p> <p>24 A. Again, it depends on the fact that I don't know 25 what they meant by swing states, and if it's</p> <p style="text-align: right;">67</p>
<p>1 swing state.</p> <p>2 Q. Well, let me read you a sentence.</p> <p>3 "If REDMAP achieves its goals, 4 nearly half of the traditionally swing 5 states [sic] will be drawn by Republicans 6 before the 2012 election cycle."</p> <p>7 What is your definition of a swing 8 state?</p> <p>9 A. The generic definition is a state which will 10 vote either Republican or Democratic depending 11 on the issues and the candidates and the amount 12 of money spent in the election.</p> <p>13 If you look at it in redistricting 14 context, it would be -- I don't think you'd have 15 what they call a swing state in the context of 16 redistricting.</p> <p>17 Q. But you understood when you were working for the 18 Republican State Legislative Committee as a 19 consultant that one of its goals was to win 20 control of the redistricting process in at least 21 half of the traditional swing states?</p> <p>22 A. I really don't remember whether that was the 23 percentage involved.</p> <p>24 All I remember is that they were -- 25 they would be doing their full -- fulfilling</p> <p style="text-align: right;">66</p>	<p>1 half of the swing states, that's I think 2 different than what you asked me the first time. 3 So --</p> <p>4 Q. The question is: Do you agree or disagree with 5 the statement that that was the goal as stated 6 in this document of the REDMAP Project?</p> <p>7 A. I do not disagree that that was the goal of this 8 statement, yeah, in there.</p> <p>9 Q. And as you understood the project at the time, 10 you understood that to be part of the goal?</p> <p>11 A. Again, I don't -- I can't speak as to the 12 specifics of that particular statement which is 13 not authored by me or said by me.</p> <p>14 The project was to win control of more 15 states legislators -- legislatures and that 16 would have a very significant effect on 17 redistricting.</p> <p>18 MR. BONDURANT: Mark that as 6A, 19 please.</p> <p>20 (WHEREUPON, Plaintiffs' Exhibit 6A was 21 marked for identification.)</p> <p>22 THE WITNESS: Is that not the same 23 piece. No. Okay.</p> <p>24 MR. FARR: Not to interrupt you, do you 25 have an extra one of these for the Attorney</p> <p style="text-align: right;">68</p>

<p>1 General's Office so they can start looking at 2 these too?</p> <p>3 Thank you very much. I should have 4 asked earlier.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. Dr. Hofeller, can you identify Deposition 7 Exhibit 6A as simply another version of 8 Exhibit 6?</p> <p>9 A. It appears to be, yes. Maybe more detailed.</p> <p>10 Q. I'm not even sure there's any differences, just 11 on different paper.</p> <p>12 A. Maybe they were trying to make it more 13 understandable to some people.</p> <p>14 Q. But in any event, you would identify that as 15 being a political report dated July 10th of the 16 REDMAP Project for which you were a consultant?</p> <p>17 A. That's what the header says. Yes, I agree 18 that's what it is.</p> <p>19 Q. And if it were produced at that time, you expect 20 routinely that you would have seen it?</p> <p>21 A. No. In fact, I don't remember seeing it at all. 22 (WHEREUPON, Plaintiffs' Exhibit 7 was 23 marked for identification.) 24 THE WITNESS: Actually, he would be 25 familiar with this because that was drawn in</p> <p style="text-align: right;">69</p>	<p>1 Q. Does the PowerPoint --</p> <p>2 A. I would just like to expand a little, that 3 whatever PowerPoint I might give might be more 4 tailored to the audience to whom it has been 5 given.</p> <p>6 Q. Specifically in the PowerPoint, you advise your 7 audience and you advise your clients to make 8 sure that the computer you use for redistricting 9 is kept in a private location?</p> <p>10 A. Yes.</p> <p>11 Q. Now, in North Carolina, the state legislative 12 office had its own redistricting computer; is 13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it used Maptitude?</p> <p>16 A. It believe it was a hybrid of Maptitude hooked 17 up to an ESRI program too. So it was a hybrid 18 system. It had a lot more capacity to produce 19 reports and maps than did the Maptitude system.</p> <p>20 Q. All right. How did the state legislative 21 Maptitude system compare to the Maptitude system 22 that you had on your own computer?</p> <p>23 A. I only used it really once or twice, I think, 24 but it was abysmally slow. The display 25 capabilities of the system were not very good.</p> <p style="text-align: right;">71</p>
<p>1 your state by a Democrat.</p> <p>2 BY MR. BONDURANT:</p> <p>3 Q. Can you identify Exhibit 7 as a PowerPoint which 4 you authored dated January 24, 2011?</p> <p>5 A. Yes, I could identify it as you stated.</p> <p>6 Q. And at the time you authored this, you were 7 redistricting coordinator for the Republican 8 National Committee?</p> <p>9 A. Yes.</p> <p>10 Q. Were you redistricting coordinator for the 11 Republican National Committee at the same time 12 that you were a redistricting consultant of the 13 Republican State Legislative Committee?</p> <p>14 A. Let me think. I believe so, yes. I think the 15 contract with the RSLC ran out in April of that 16 year.</p> <p>17 Q. So in February or January you were still on the 18 payroll of the RNC, not the RSLC?</p> <p>19 A. To the best of my knowledge, I was, yes, 20 receiving funding from both.</p> <p>21 Q. When you are retained by state legislatures or 22 law firms to assist them in redistricting, does 23 this PowerPoint contain the advice which you 24 give them in that relationship?</p> <p>25 A. Generally, yes, I think.</p> <p style="text-align: right;">70</p>	<p>1 And for my part, I could really get enough work 2 done on it in the amount of time that I usually 3 had to do it.</p> <p>4 Q. Did your computer have North Carolina 5 redistricting data loaded on it that was not 6 available on the General Assembly's computer?</p> <p>7 A. No.</p> <p>8 Q. Did you get the North Carolina specific data, 9 election results, geographic boundaries, that 10 sort of data, from the North Carolina 11 legislature's computer?</p> <p>12 A. Some yes. Some no.</p> <p>13 Q. What other sources do you get data pertaining to 14 North Carolina?</p> <p>15 A. The United States Bureau of the Census puts out 16 a geographic mapping file called TIGER, 17 T-I-G-E-R. It's an acronym. And it puts out, 18 of course, the redistricting data file, which is 19 all the demographic data. So essentially your 20 map and your demographic data comes directly 21 from the Census Bureau.</p> <p>22 So we would have gotten that data 23 through the developers of Maptitude, Caliper 24 Corporation in Newton, Massachusetts. So they 25 would take the TIGER file and the redistricting</p> <p style="text-align: right;">72</p>

<p>1 data file and format it to run specifically on 2 Maptitude, which was their redistricting GIS 3 system. 4 The political data, i.e., the election 5 data and the registration data, were compiled by 6 Legislative Services, the IT people, and were 7 publicly available to everybody, and that was 8 the database that I also had for my computer. 9 Q. The Legislative Service Office also got the 10 TIGER data from the Census just as yours was? 11 A. Yes. There is no other source of the data. 12 Q. So in that respect, their data and your data 13 were identical? 14 A. To the best of my knowledge, they were. I never 15 found any differences. 16 Q. And the political data on the Legislative 17 Service Office computer was the data that you 18 downloaded and used for your purposes in 19 redistricting North Carolina? 20 A. Actually, somebody else downloaded it for me, 21 put it on my computer, but it was -- 22 Q. But the data was the same? 23 A. It was the same data. I think it was actually a 24 subset of all the data that they had. 25 Q. One of the things you counsel in this PowerPoint</p> <p style="text-align: right;">73</p>	<p>1 A. In the North Carolina context? 2 Q. Yes. 3 A. Yes. 4 Q. And you knew that under North Carolina law, once 5 the redistricting was passed, any e-mails that 6 were communicated to legislators would be public 7 records so there would be transparency? 8 MR. FARR: Objection. 9 THE WITNESS: I don't actually know 10 that to be true. I'm not an expert on 11 North Carolina law. I think that is a legal 12 question that should go to the attorneys. 13 BY MR. BONDURANT: 14 Q. We'll come to that. 15 A. Okay. 16 Q. But you did not want any instructions that you 17 received to become public as far as 18 redistricting in North Carolina is concerned? 19 MR. FARR: Objection. 20 THE WITNESS: Once again, I think one 21 has to realize that redistricting -- 22 BY MR. BONDURANT: 23 Q. Was that a "yes" or a "no"? 24 A. The way you asked it it's a no. 25 Q. No, you did not want your e-mails to become</p> <p style="text-align: right;">75</p>
<p>1 presentation under the heading "Computer 2 Perils," you warn to remember recent e-mail 3 disasters and you have three -- 4 A. Can you give me the page. 5 Q. -- three exclamation points. 6 A. How many pages in? I found it. Headed 7 "Computer Perils"? 8 Q. Yes. 9 A. After the page it says "Check out your 10 Computer"? 11 Q. Correct. 12 A. Okay. 13 Q. What e-mail disasters were you referring to? 14 A. I think all of us have -- have observed in this 15 nation the disasters which come from having your 16 e-mails open to the public. I think we had an 17 example in the last election, so... 18 Q. Were there any specific references to 19 redistricting e-mails that you had in mind? 20 A. My general philosophy on e-mails is that you 21 should be very careful what you say in any 22 e-mail because, for the most part, e-mails are 23 forever and they're not really private. 24 Q. And you knew you were doing redistricting for a 25 public body, correct?</p> <p style="text-align: right;">74</p>	<p>1 public? 2 MR. FARR: That's not the question. 3 THE WITNESS: That's not the question. 4 Do you want to ask the question and 5 I'll answer it yes or no. 6 BY MR. BONDURANT: 7 Q. You did not want any e-mails relating to your 8 work in the redistricting in North Carolina to 9 become public? 10 A. No. Any e-mails that I sent and some which I 11 had sent actually did become public. 12 Could I expand my answer, please. 13 Q. My question is did you want them to become 14 public, not whether over your objections they 15 became public. 16 A. I did not think that this, like any other piece 17 of legislation, should be developed by e-mail. 18 It should be developed by consultation. 19 So I would have to answer your question 20 by saying if I wrote e-mails, I wouldn't mind 21 their being public. I don't think it's wise to 22 write e-mails when it isn't necessary because 23 you have no control over it and you have no 24 control over the answers that might come back 25 from the e-mail.</p> <p style="text-align: right;">76</p>

<p>1 So if you'll allow me to expand a</p> <p>2 little, I would say that my experience with</p> <p>3 legislation in general -- and maybe you can ask</p> <p>4 this question of the chairmen when you get</p> <p>5 them -- is that all legislation is the result of</p> <p>6 compromise and of discussions that people have</p> <p>7 and they don't generally do them through e-mail.</p> <p>8 Q. Turn to the page entitled "Legal Perils" where</p> <p>9 you say "A journey to legal HELL starts with but</p> <p>10 a single misstatement or a stupid e-mail."</p> <p>11 A. Yes. I think recent events of this election</p> <p>12 year have made that quite obvious to anybody.</p> <p>13 Q. You wrote this in 2011.</p> <p>14 A. Well, it was -- it is true in 2011 as it was in</p> <p>15 2005 as it was in 2000. It's always true.</p> <p>16 People think that e-mail is an intimate</p> <p>17 conversation between two people and it isn't.</p> <p>18 Q. And two pages later you say "E-Mails are the</p> <p>19 tool of the devil. Use personal contact or a</p> <p>20 safe phone."</p> <p>21 A. I'm sorry. That's two pages back, yes.</p> <p>22 I made that statement. I think it's</p> <p>23 true.</p> <p>24 Q. And that's the advice you gave Senator Rucho and</p> <p>25 Representative Lewis in working in</p> <p style="text-align: right;">77</p>	<p>1 BY MR. BONDURANT:</p> <p>2 Q. No.</p> <p>3 A. Okay. I would say I did not make a policy</p> <p>4 decision as to e-mails in -- in 2016.</p> <p>5 Q. Did you send any e-mails in connection with 2016</p> <p>6 redistricting?</p> <p>7 A. I don't think so, no.</p> <p>8 Q. Did you receive any e-mails in connection with</p> <p>9 the 2016 redistricting?</p> <p>10 A. I don't think anything that would be of any</p> <p>11 interest in the matter of this case, no. I</p> <p>12 might have -- there might have been an e-mail or</p> <p>13 something that said we should go to lunch, okay.</p> <p>14 I just don't remember. I didn't find anything</p> <p>15 on my e-mails that would indicate that.</p> <p>16 Q. Did you send any letters, memoranda or documents</p> <p>17 in connection with the 2016 redistricting or</p> <p>18 receive any?</p> <p>19 A. I think you have to understand that there wasn't</p> <p>20 a lot of --</p> <p>21 Q. Is that a "yes" or a "no"?</p> <p>22 A. Ask it again.</p> <p>23 (Record Read.)</p> <p>24 THE WITNESS: Not to my recollection,</p> <p>25 unless you consider the plan itself a document.</p> <p style="text-align: right;">79</p>
<p>1 North Carolina?</p> <p>2 A. No, I don't know that I gave them this advice</p> <p>3 directly. Somebody else may have given them</p> <p>4 this advice.</p> <p>5 Q. But it is the method under which you operated,</p> <p>6 that you avoided putting anything in writing or</p> <p>7 receiving anything in writing to the extent</p> <p>8 possible as far as your redistricting work is</p> <p>9 concerned?</p> <p>10 A. The decision as to whether or not I would</p> <p>11 receive anything in writing or not was their</p> <p>12 decision. The decision on whether or not I</p> <p>13 would send anything in writing would also be</p> <p>14 their decision. If they asked for a report, I</p> <p>15 would give a report. I'd be glad to write a</p> <p>16 report. A report is different than an e-mail.</p> <p>17 Q. In connection with the North Carolina</p> <p>18 redistricting both in 2011 and 2016, you as a</p> <p>19 policy matter made a decision not to send any</p> <p>20 e-mails and not to receive any e-mails as far as</p> <p>21 that redistricting was concerned?</p> <p>22 MR. FARR: Objection.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: Do you want to ask that</p> <p>25 differently? I'm sorry.</p> <p style="text-align: right;">78</p>	<p>1 BY MR. BONDURANT:</p> <p>2 Q. So would it be fair to say there's no paper</p> <p>3 trail of any communication between you and</p> <p>4 Senator Rucho or Representative Lewis or any</p> <p>5 representative in the legislature in connection</p> <p>6 with the 2016 redistricting?</p> <p>7 A. Are you asking between them and specifically</p> <p>8 with me?</p> <p>9 Q. Yes.</p> <p>10 A. The answer is, no, there was not any.</p> <p>11 Q. If you'll turn over two more pages, I would like</p> <p>12 to ask you about another "Legal Perils" that you</p> <p>13 listed in your PowerPoint. Quote, "Don't get</p> <p>14 caught in 'criteria hell.'"</p> <p>15 What message were you conveying there?</p> <p>16 A. Now, the message is is don't state criteria for</p> <p>17 your plan and draw your plan by -- to draw your</p> <p>18 plan by the criteria that you cannot adhere to.</p> <p>19 Q. So did you have any written criteria when you</p> <p>20 drew the 2011 congressional redistricting plan?</p> <p>21 A. To me specifically are you asking?</p> <p>22 Q. Yes.</p> <p>23 A. No, not to me specifically.</p> <p>24 Q. And did Senator Rucho or Representative Lewis or</p> <p>25 any other representative of the legislature or</p> <p style="text-align: right;">80</p>

<p>1 their counsel convey to you any written criteria</p> <p>2 for the 2011 plan?</p> <p>3 A. To me specifically again?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. So as far as you were concerned in drafting the</p> <p>7 plan as the principal architect in 2011, there</p> <p>8 were no written criteria, everything was</p> <p>9 communicated to you orally in terms of</p> <p>10 instructions?</p> <p>11 A. Well, there -- were you saying something?</p> <p>12 MR. FARR: No.</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. Do you need that read back?</p> <p>15 A. No.</p> <p>16 Q. It's got a yes-or-no answer.</p> <p>17 MR. BONDURANT: Would you read it back,</p> <p>18 please.</p> <p>19 (Record Read.)</p> <p>20 THE WITNESS: Okay. Well, we've</p> <p>21 already had a discussion about principal</p> <p>22 architect, so I'm going to say that there was no</p> <p>23 written criteria specifically directed at me.</p> <p>24 BY MR. BONDURANT:</p> <p>25 Q. Criteria in any form other than oral, none were</p> <p style="text-align: right;">81</p>	<p>1 was actually finalized that had to be adhered</p> <p>2 to, but I don't really remember. So I knew</p> <p>3 there were certain standards that we had to meet</p> <p>4 for sure, but I didn't receive personally any</p> <p>5 written criteria.</p> <p>6 (WHEREUPON, Plaintiffs' Exhibit 8 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. Dr. Hofeller, can you identify Exhibit 8?</p> <p>10 A. That appears to be an e-mail from me to Joel</p> <p>11 Raupe, May 24, 2011, actually relaying a message</p> <p>12 from Lindsay Fisher, director of policy for the</p> <p>13 RSLC.</p> <p>14 Q. Attached to it are a list of dates that you were</p> <p>15 in Raleigh working on the North Carolina</p> <p>16 redistricting. Is that a list which you</p> <p>17 prepared?</p> <p>18 A. I'm sorry, I don't see the list of dates.</p> <p>19 Q. I may have handed you the wrong exhibit.</p> <p>20 A. Okay. We'll come back to this maybe.</p> <p>21 Q. No. Keep it.</p> <p>22 A. Okay.</p> <p>23 Q. Now, at the time Exhibit 8 was written, you were</p> <p>24 at this point a consultant for the Republican</p> <p>25 State Legislative Committee?</p> <p style="text-align: right;">83</p>
<p>1 communicated to you in 2011?</p> <p>2 A. My recollection is there was criteria drawn up</p> <p>3 during the process, and I was certainly aware of</p> <p>4 what was in that criteria. I also knew, for</p> <p>5 instance --</p> <p>6 Q. During the 2011 process?</p> <p>7 A. Yes.</p> <p>8 Q. What -- what are you referring to? Did you see</p> <p>9 a document?</p> <p>10 A. There are rules in the North Carolina</p> <p>11 Constitution, as interpreted by the Supreme</p> <p>12 Court, as to how legislative plans should be</p> <p>13 drawn, including the county grouping rule.</p> <p>14 Q. I'm speaking of congressional districts.</p> <p>15 A. I don't know that there are any specific rules,</p> <p>16 but then again that's a -- in the Constitution,</p> <p>17 that's a --</p> <p>18 Q. I simply want to clarify. You saw, in 2011,</p> <p>19 nothing in writing that set forth any</p> <p>20 instructions, criteria, standards that you were</p> <p>21 to meet in drafting the 2011 Congressional Plan?</p> <p>22 MR. FARR: Objection.</p> <p>23 THE WITNESS: Again, I don't really</p> <p>24 remember, but my recollection is that there were</p> <p>25 some statements along the way before the plan</p> <p style="text-align: right;">82</p>	<p>1 A. Which e-mail?</p> <p>2 Q. Your e-mail to Joel Raupe dated May 24th.</p> <p>3 A. I was consultant to whom?</p> <p>4 Q. The Republican State Legislative Committee.</p> <p>5 A. I don't know for sure. I don't know -- I think</p> <p>6 maybe not. Again, I don't remember when our</p> <p>7 contract with the RSLC expired.</p> <p>8 Q. I think it began in March -- according to your</p> <p>9 resume, it began in May 2009 and ran through</p> <p>10 April 2011, and then in April 2011 you say in</p> <p>11 your resume that you were employed by the State</p> <p>12 Government Leadership Foundation as a</p> <p>13 consultant. Is that --</p> <p>14 A. I don't know. I have to go back and look at my</p> <p>15 resume.</p> <p>16 Q. It's Page 4 of your resume.</p> <p>17 A. I'm getting there.</p> <p>18 Q. Excuse me. It's Page 3.</p> <p>19 A. It says that my -- my period of employment as a</p> <p>20 consultant ended in 2012.</p> <p>21 Q. And began in April 2011.</p> <p>22 A. Right. I'm sorry. I was a year off. My</p> <p>23 apologies.</p> <p>24 Q. No apology necessary.</p> <p>25 A. So the answer to your question is, yes, I was</p> <p style="text-align: right;">84</p>

<p>1 employed by the RSLC at the time that was</p> <p>2 written.</p> <p>3 Q. And the contracting officer was Chris Jankowski?</p> <p>4 A. Yes.</p> <p>5 Q. And he was also the executive director of the</p> <p>6 Republican State Legislative Committee at the</p> <p>7 same time?</p> <p>8 A. That's my recollection, yes.</p> <p>9 Q. So he had two hats, one with the foundation, one</p> <p>10 with the committee?</p> <p>11 A. It wasn't an exceptionally large staff so many</p> <p>12 people wore multiple hats.</p> <p>13 Q. The answer was "yes"?</p> <p>14 A. Yes.</p> <p>15 Q. Now, let's go back to Exhibit 8. Do you recall</p> <p>16 reviewing the draft of the letter to legislative</p> <p>17 leaders that is attached as Exhibit 8?</p> <p>18 A. I have to review it, please.</p> <p>19 Q. Certainly.</p> <p>20 A. I don't remember specifically whether I saw it</p> <p>21 or not.</p> <p>22 Q. But this is your e-mail which you can identify</p> <p>23 to which it was attached?</p> <p>24 A. Yes.</p> <p>25 Q. So you would not deny having seen the letter?</p> <p style="text-align: right;">85</p>	<p>1 Q. And that was the plan, and that legislative --</p> <p>2 that team of seasoned redistricting experts</p> <p>3 consisted of you and your company?</p> <p>4 A. Yes.</p> <p>5 Q. And you were aware that this Republican State</p> <p>6 Legislative Committee was offering you to -- in</p> <p>7 your assistance in drawing proposed maps for</p> <p>8 both congressional and legislative</p> <p>9 redistricting?</p> <p>10 A. Yes.</p> <p>11 Q. And that you were the leader of the team?</p> <p>12 A. Yes.</p> <p>13 Q. And you were aware that the plan was to have the</p> <p>14 entirety of the redistricting effort by your</p> <p>15 team, quote, "paid for using non-federal dollars</p> <p>16 through our 501(c)(4) organization, the State</p> <p>17 Government Leadership Foundation"?</p> <p>18 A. From the standpoint of the RSLC, I guess that</p> <p>19 was true. How they paid for it was really not</p> <p>20 concern to me. I was just interested in getting</p> <p>21 paid.</p> <p>22 Q. Do you remember how you got paid?</p> <p>23 A. By check.</p> <p>24 Q. And was the check from the Foundation or the</p> <p>25 RSLC?</p> <p style="text-align: right;">87</p>
<p>1 A. Probably I saw it. I just don't really</p> <p>2 remember. I did attach it to the letter so I</p> <p>3 probably reviewed it before I attached it.</p> <p>4 Q. Were you aware that the Republican State</p> <p>5 Legislative Committee was going to offer your</p> <p>6 assistance to state legislatures in</p> <p>7 redistricting following the census?</p> <p>8 A. Yes.</p> <p>9 Q. And let me see if I can refresh your</p> <p>10 recollection more about the letter that is</p> <p>11 attached.</p> <p>12 Now, by May you knew the results of the</p> <p>13 2010 elections, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you were aware in May of 2011 that the</p> <p>16 Republican Party now controlled 56 legislative</p> <p>17 chambers?</p> <p>18 A. I don't -- I have no reason to challenge that</p> <p>19 figure. Probably, yes.</p> <p>20 Q. And you were aware at the time that the</p> <p>21 Republican State Legislative Committee had</p> <p>22 retained a team of seasoned redistricting</p> <p>23 experts that we will make available to you at no</p> <p>24 cost to your caucus for assistance.</p> <p>25 A. Yes.</p> <p style="text-align: right;">86</p>	<p>1 A. I think it was from the Foundation, but I don't</p> <p>2 recall. That was several years back.</p> <p>3 Q. And do you recall under your contract how much</p> <p>4 you were to be paid per month?</p> <p>5 A. No.</p> <p>6 (WHEREUPON, Plaintiffs' Exhibit 9 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. Can you identify Exhibit 9 as the final version</p> <p>10 of the draft letter that was attached to your</p> <p>11 e-mail identified as Exhibit 8?</p> <p>12 MR. FARR: Objection to the form.</p> <p>13 THE WITNESS: I don't know whether it</p> <p>14 was the final copy or not. I didn't write it so</p> <p>15 I don't know. It looks to me like it's the same</p> <p>16 letter.</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. I believe it to be the same.</p> <p>19 A. Okay. I don't know if it was final form or</p> <p>20 maybe it was a draft or whatever it was. I just</p> <p>21 don't remember.</p> <p>22 Q. Did you have any understanding as to how</p> <p>23 Jankowski's letter that you reviewed the draft</p> <p>24 of was to be sent?</p> <p>25 A. It says "Dear Legislative Leaders" at the top,</p> <p style="text-align: right;">88</p>

<p>1 so I imagine they were sending it out to the</p> <p>2 leaders in the various chambers of our state's</p> <p>3 legislatures.</p> <p>4 Q. You would not expect the letter to be going to</p> <p>5 all legislative leaders in all 50 states but</p> <p>6 only to the Republican leaders in the states</p> <p>7 controlled by the Republicans?</p> <p>8 A. No, I don't think that's true.</p> <p>9 Q. You think it went to the Democratic leader in</p> <p>10 Massachusetts?</p> <p>11 A. I don't think that's the question you asked me.</p> <p>12 I believe it went to the entire</p> <p>13 leadership across the country of all the</p> <p>14 legislatures whether they were in the majority</p> <p>15 or the minority.</p> <p>16 Q. When you say leadership, you're speaking of</p> <p>17 Republican leadership?</p> <p>18 A. Yes.</p> <p>19 Q. You didn't expect the letter to go to the</p> <p>20 Democrats?</p> <p>21 A. No doubt they saw it.</p> <p>22 Q. Why are you so confident the Democrats saw it</p> <p>23 other than by subpoena?</p> <p>24 A. I think public documents are hard to keep</p> <p>25 secret.</p> <p style="text-align: right;">89</p>	<p>1 Q. Was the contract with you individually or with</p> <p>2 your LLC global strategies?</p> <p>3 A. Geographic Strategies.</p> <p>4 Q. Geographic Strategies, thank you.</p> <p>5 A. I believe it was between the RSLC and the LLC.</p> <p>6 Q. Geographic Strategies?</p> <p>7 A. Yes.</p> <p>8 Q. And Geographic Strategies had two principals?</p> <p>9 A. Actually, there were three people in the LLC,</p> <p>10 the three people that are named here.</p> <p>11 Q. You, Mr. Oldham and Wild?</p> <p>12 A. Michael Wild.</p> <p>13 Q. Michael Wild.</p> <p>14 A. Who just died this summer.</p> <p>15 Q. Gee, I'm sorry.</p> <p>16 A. Believe me, I am too.</p> <p>17 (WHEREUPON, Plaintiffs' Exhibit 11 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Dr. Hofeller, I'm showing you what's been marked</p> <p>21 as Exhibit 11. Attached to it is a list of</p> <p>22 dates in 19 -- excuse me, in 2011 reflecting --</p> <p>23 purporting to reflect your travels to Raleigh in</p> <p>24 connection with the North Carolina</p> <p>25 redistricting.</p> <p style="text-align: right;">91</p>
<p>1 (WHEREUPON, Plaintiffs' Exhibit 10 was</p> <p>2 marked for identification.)</p> <p>3 BY MR. BONDURANT:</p> <p>4 Q. Dr. Hofeller, I've shown you Exhibit 10, a</p> <p>5 budget that was produced by the Republican State</p> <p>6 Legislative Committee in response to a subpoena</p> <p>7 for the period April '11, 2011, through</p> <p>8 November 2012.</p> <p>9 Does that refresh your recollection as</p> <p>10 to the amounts you and Mr. Oldham were being</p> <p>11 paid by the Republican State Legislative</p> <p>12 Committee?</p> <p>13 A. Yes.</p> <p>14 Q. And is that accurate as far as you know?</p> <p>15 A. Well, I don't specifically know whether this</p> <p>16 particular budget was actually accepted or not.</p> <p>17 I just don't remember.</p> <p>18 Q. But you remember seeing the budget at the time?</p> <p>19 A. I probably made the budget up. Again, I have to</p> <p>20 look at my records to know if it was accepted.</p> <p>21 Q. You have records that would show that?</p> <p>22 A. Yes.</p> <p>23 Q. And this was -- these payments were made</p> <p>24 pursuant to a contract with you?</p> <p>25 A. Yes.</p> <p style="text-align: right;">90</p>	<p>1 A. Yes, that's what's in there.</p> <p>2 Q. Is that list of dates information you supplied</p> <p>3 to Mr. Farr so he could provide it to Mr. Speas</p> <p>4 and Ms. Earls?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. And in fact, the e-mail at the bottom is from</p> <p>7 you to Tom Farr enclosing that information?</p> <p>8 A. It is.</p> <p>9 Q. And that information is accurate so far as you</p> <p>10 know?</p> <p>11 A. So far as I know.</p> <p>12 (WHEREUPON, Plaintiffs' Exhibit 12 was</p> <p>13 marked for identification.)</p> <p>14 BY MR. BONDURANT:</p> <p>15 Q. Can you identify Exhibit 12 as invoices rendered</p> <p>16 by your firm to Mr. Farr and his law firm</p> <p>17 Ogletree Deakins Nash Smoak & Stewart covering</p> <p>18 the period August 9th through the last date</p> <p>19 being January 27, 2011?</p> <p>20 A. Actually, I think it was from the period of</p> <p>21 April 1, 2011, through January 31st of 2012.</p> <p>22 Q. That's correct. Thank you.</p> <p>23 A. You're welcome.</p> <p>24 Q. Help me understand this. You were being paid</p> <p>25 simultaneously by the Foundation for work on</p> <p style="text-align: right;">92</p>

<p>1 redistricting and you were being paid separately</p> <p>2 by Mr. Farr's law firm for your work in</p> <p>3 North Carolina?</p> <p>4 MR. FARR: Objection to the form.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: Yes. It was a different</p> <p>7 body of work I was being paid for by the two</p> <p>8 sources.</p> <p>9 BY MR. BONDURANT:</p> <p>10 Q. I had understood from Mr. Jankowski's letter to</p> <p>11 state legislative leaders at which we looked as</p> <p>12 Exhibit 10 that the entire effort at the state</p> <p>13 level was going to be paid for by the Republican</p> <p>14 Foundation with 501(c)(3) money.</p> <p>15 Can you explain why you were being paid</p> <p>16 separately by Mr. Farr's law firm?</p> <p>17 A. The amount of --</p> <p>18 MR. FARR: Objection to the form.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: The amount of contract</p> <p>21 with the RSLC was for work that was generally</p> <p>22 across the country. It was not a specifically</p> <p>23 long, involved process of drawing maps in</p> <p>24 individual states. When I look at a map which</p> <p>25 the state was drawing and make comments on the</p> <p style="text-align: right;">93</p>	<p>1 non-federal dollars through our 0501(c)(4)</p> <p>2 organization, the State Government Leadership</p> <p>3 Foundation." That statement as applied to</p> <p>4 North Carolina is simply not true?</p> <p>5 A. I disagree with the premise of your question</p> <p>6 there.</p> <p>7 Q. Is the statement true or not? Was the entirety</p> <p>8 of your effort in redistricting offered to the</p> <p>9 state legislative leaders in the State of</p> <p>10 North Carolina paid for by the Foundation?</p> <p>11 MR. FARR: Objection to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. Okay. My point exactly.</p> <p>15 Did you have a separate engagement</p> <p>16 letter with Mr. Farr and his law firm?</p> <p>17 A. I don't believe we ever had an engagement</p> <p>18 letter, no.</p> <p>19 Q. So it was all oral?</p> <p>20 A. To the best of my recollection.</p> <p>21 Q. And whom were you engaged by Mr. Farr and his</p> <p>22 law firm to represent or assist?</p> <p>23 A. I don't represent anybody. I was engaged to</p> <p>24 help in the line-drawing process and what we</p> <p>25 expected to be the upcoming legal contests</p> <p style="text-align: right;">95</p>
<p>1 map or offer suggestions on the map, but, as you</p> <p>2 know, required by contract was assisting states</p> <p>3 with all the problems that they had with</p> <p>4 their -- their line-drawing process.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. So when Mr. Jankowski states in Exhibit 9 in the</p> <p>7 letter to the legislative leaders that, quote,</p> <p>8 "The entirety of this effort will be paid for</p> <p>9 using non-federal dollars through 501(c)(4)</p> <p>10 organization, the State Government Leadership</p> <p>11 council" [sic], that would not be accurate?</p> <p>12 That was only paying you for national efforts,</p> <p>13 and specific efforts at a state level, like</p> <p>14 North Carolina, were going to be paid for</p> <p>15 separately?</p> <p>16 MR. FARR: Objection.</p> <p>17 THE WITNESS: I don't understand what</p> <p>18 your question to me is on that.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Well, the specific question is -- if you want to</p> <p>21 look back at Exhibit 9, in that letter "Dear</p> <p>22 Legislative Leaders," Mr. Jankowski offers the</p> <p>23 help of the redistricting team led by Tom</p> <p>24 Hofeller and then says, I quote, "The entirety</p> <p>25 of this effort will be paid for using</p> <p style="text-align: right;">94</p>	<p>1 which, of course, did actually happen.</p> <p>2 Q. Whom did you understand Mr. Farr's clients to</p> <p>3 be?</p> <p>4 A. My understanding, although he can better answer</p> <p>5 that himself, is he was retained by the</p> <p>6 legislature.</p> <p>7 Q. The legislature generally or by Senator Rucho</p> <p>8 and Representative Lewis?</p> <p>9 A. I don't know the specifics of their law firm's</p> <p>10 letter of engagement.</p> <p>11 Q. Did you --</p> <p>12 A. If there was one.</p> <p>13 Q. Did you have any understanding at the time</p> <p>14 whether Mr. Farr was representing those two</p> <p>15 legislators as individuals or was representing</p> <p>16 the Republican majority in the legislature or</p> <p>17 was representing the entire General Assembly of</p> <p>18 the legislature?</p> <p>19 A. Again, you'd have to ask Mr. Farr his</p> <p>20 understanding.</p> <p>21 Q. No. My question was what was your understanding</p> <p>22 at the time.</p> <p>23 A. My understanding was he was representing the</p> <p>24 legislature.</p> <p>25 ///</p> <p style="text-align: right;">96</p>

<p>1 (WHEREUPON, Plaintiffs' Exhibit 13 was 2 marked for identification.) 3 BY MR. BONDURANT: 4 Q. Dr. Hofeller, can you identify Exhibit 13 as a 5 collection of invoices rendered by Geographic 6 Strategies? 7 A. That's what it appears to be. Yes, I think so. 8 Q. And a W-9 which you signed in January 28, 2012? 9 A. Yes. 10 Q. These were invoices to requisition the payment 11 as shown on the budget that we examined 12 previously? 13 A. Yes. 14 MR. FARR: Emmet, when you have a good 15 stopping time, let's take a break when it's 16 convenient for you. 17 MR. BONDURANT: Sure. This is a 18 perfect time. Sure. 19 MS. MACKIE: Let me state for the 20 record, an e-mail went out with a courtesy copy 21 of those documents 30 minutes ago. 22 MR. FARR: And I'll also state for the 23 record that my office is unable to find any 24 evidence that this has been provided to us, your 25 e-mail you just referenced.</p> <p style="text-align: right;">97</p>	<p>1 A. At that time it would have had to have been 2 either 2010 or 2011, but, remember, I told you 3 before that they were using a hybrid system that 4 was coupled up with ESRI's GIS software. I used 5 a stand-alone on a microprocessor -- not a 6 microprocessor -- laptop. 7 Q. What GIS software did you use? 8 A. Well, Maptitude is a form of GIS software. 9 Caliper Corporation's main line of business is 10 GIS software. Maptitude for redistricting lies 11 on top of their GIS. 12 Q. And was North Carolina using the Maptitude GIS 13 software? 14 A. I think in part but not wholly. 15 Q. Not wholly? 16 A. It appeared to me when I got on it that it had 17 more of ESRI's mapping capabilities in it than 18 did the standalone Maptitude system. 19 Q. In your Maptitude software program, you could 20 identify voter tabulation districts based on how 21 they voted in past elections? 22 A. Actually, that's -- they're not called voter 23 tabulation districts. They're voter districts. 24 VTD stands for voter district. 25 Yes, it was part of the hierarchical</p> <p style="text-align: right;">99</p>
<p>1 MS. MACKIE: Understood. All the 2 e-mail went out today with all of those 3 documents. 4 THE VIDEOGRAPHER: Off record at 5 12:40 p.m. 6 (Lunch Recess.) 7 THE VIDEOGRAPHER: On record at 8 1:46 p.m. 9 (WHEREUPON, Plaintiffs' Exhibit 14 was 10 marked for identification.) 11 BY MR. BONDURANT: 12 Q. Dr. Hofeller, can you identify Exhibit 14 as the 13 description of the Maptitude software program 14 that you used and the Legislative Service Office 15 in the North Carolina General Assembly used? 16 A. No. It's the -- it's the current description of 17 what they have. 18 Q. Current description. 19 A. Gone through many versions since then. 20 Q. What version do you use? 21 A. I'm still using the 2011 version. 22 Q. 2011 version? 23 A. Uh-huh. 24 Q. Was that the same version that was loaded in the 25 North Carolina Legislative Service Office?</p> <p style="text-align: right;">98</p>	<p>1 geography that was contained in the TIGER file 2 which we got from the U.S. Census Bureau. 3 Q. But the election result data you got from the 4 Legislative Service Office? 5 A. The Legislative Service data came from -- was 6 tabulated to the VTD level. 7 Q. To the VTD level. Are you calling that voter 8 districts or voter tabulation districts? 9 A. VTD are voter districts. 10 Q. Okay. 11 A. That's the formal census name for it. 12 Q. Is that the smallest unit for which you had 13 political data available? 14 A. Yes. 15 Q. Were census blocks larger or smaller than voter 16 districts? 17 A. Smaller. 18 Q. Smaller. Could you get voting history data at 19 the census block level? 20 A. In order to run on Maptitude, you had to, what 21 we call, disaggregate the election data down to 22 the block level. 23 Q. Did you do that? 24 A. Yes. I didn't do it. Somebody else did it. 25 Q. On your computer.</p> <p style="text-align: right;">100</p>

<p>1 A. I received the data onto my computer already at 2 the block level. All the data was based on the 3 block level and then it was reaggregated back up 4 to VTDs and also to other units of census 5 geography, like block groups, tracks, counties, 6 places, all sorts of different aggregations. 7 Q. Who disaggregated the voter history data to the 8 block level that you used? 9 A. The disaggregation on my block level data was 10 actually done by Mike Wild, who was my partner, 11 associate, different times different things. 12 At this level, the disaggregation of 13 the data on the North Carolina computer was done 14 by Legislative Services IT branch. 15 Q. But one of the capabilities of the Maptitude 16 program was to give you the ability to aggregate 17 and disaggregate voter tabulation data down to 18 the block level? 19 A. Well, the data already existed in the system at 20 those various levels, so the program wasn't -- 21 wasn't reaggregating it back up. If you were 22 working in terms of voter districts, you had the 23 data in your system already for the voter 24 districts. 25 Q. When you were working on the congressional map</p> <p style="text-align: right;">101</p>	<p>1 Q. What was your practice in terms of coloring 2 census blocks or voter districts based on their 3 voting performance? 4 A. Depended on what I was doing. 5 Q. In North Carolina, in congressional 6 redistricting, how did you color code those 7 districts? 8 A. Again, it depends on what I was looking for at 9 that particular point in constructing the 10 district. 11 Q. Well, did you identify the districts that were 12 strongly Republican and strongly Democratic? 13 A. I'm sorry. What do you mean again by districts? 14 Q. Voter districts or census block. 15 A. Well, census blocks have very little meaning 16 with the disaggregate data. 17 So you would display election data or 18 registration data usually at the VTD level, or 19 sometimes we call them precincts, but they're 20 not exactly one-on-one comparison. 21 Q. And displaying them at the voting district 22 level, how did you color code the districts? 23 A. When I was using -- when I was displaying them 24 at all, if I was displaying them, I would 25 usually display them by voting history data.</p> <p style="text-align: right;">103</p>
<p>1 in North Carolina, you used voter data down to 2 the census block level in designing the plans? 3 MR. FARR: Can we clarify which plan 4 you're talking about. 5 MR. BONDURANT: 2011. 6 THE WITNESS: When necessary, yes. 7 BY MR. BONDURANT: 8 Q. Did you have a method of grading either the 9 voter tabulation districts or voter districts, 10 as you call them, or the census block districts 11 based on their relative Republican or Democratic 12 voting strength? 13 A. I don't know what you mean by the term "graded." 14 Q. Did you color code the districts that were, say, 15 50/50 districts differently from those that were 16 very strongly Republican or very strongly 17 Democratic? 18 A. You have multiple ways which you can display 19 data in any unit of geography. You have a label 20 which can be one or more items from the database 21 and you can also do what they call thematics, 22 and I think that's what you mean by grading. 23 And you can color the units of geography by some 24 percentage or by some number as you wish. 25 That's something that the user specifies.</p> <p style="text-align: right;">102</p>	<p>1 Q. And what colors did you use and what did those 2 colors indicate? 3 A. Well, I usually use the rainbow spectrum because 4 everybody's familiar with that. It goes violet, 5 indigo blue, green, yellow, orange and red and 6 variations of those colors. 7 Q. What did violet indicate? 8 A. I didn't use violet that much. I used -- red 9 was -- it really depends on what you're 10 displaying and how you want it to stand out. 11 Q. When you were trying to measure the relative 12 strength of the Republican vote in a voter 13 district, what colors did you use and what did 14 those colors indicate? 15 A. Well, sometimes I use different color themes 16 too. You can also use chromatic coloring, which 17 is varying the shading of one color from one to 18 the other. 19 But usually, if I was displaying voter 20 history data that -- red would be the most 21 Democratic and dark blue would be the most 22 Republican. 23 Q. And when you say the most Democratic, what would 24 that indicate in terms of percentages or 25 likelihood of voting Democrat in the future?</p> <p style="text-align: right;">104</p>

<p>1 A. Well, it wasn't always a set percentage break, 2 but usually it centered around 50 percent. 3 Q. 50 percent. So if a district were likely in the 4 future to vote 50 percent Democratic and 5 50 percent Republican, what color would you 6 assign to it? 7 MR. FARR: Objection to form. 8 You can answer. 9 THE WITNESS: Yeah, I think that's the 10 wrong premise to your question. Ask that again. 11 BY MR. BONDURANT: 12 Q. If you had a district that voted Democratic 75 13 or 80 percent of the time, what color would you 14 assign to it? 15 A. In the past? 16 Q. Yes. 17 A. It would probably be red. 18 Q. And in 2011 -- 19 A. I'm sorry. 75 percent Democratic? 20 Q. Yes. 21 A. Red. 22 Q. And was that true in 2011 in North Carolina? 23 A. Yes. I think 75 percent is fair to say would be 24 in the -- but not very many of those. 25 Q. And if it voted 60 percent Democratic in the</p> <p style="text-align: right;">105</p>	<p>1 A. Sometimes. 2 Q. Did you do so in 2011 in apportioning the 3 congressional districts? 4 A. Sometimes. 5 (WHEREUPON, Plaintiffs' Exhibit 15 was 6 marked for identification.) 7 BY MR. BONDURANT: 8 Q. Let me ask you to look at Exhibit 15. You were 9 working in North Carolina in 2011. Did you see 10 a copy of the Legislator's Guide to 11 North Carolina Legislative and Congressional 12 Redistricting at that time? 13 A. I wasn't really working in North Carolina at 14 that time doing districts, but I did see a copy 15 of this. 16 Q. Let me see if I understand your answer. I 17 thought you identified the dates that you were 18 in North Carolina in Raleigh working on the 2011 19 congressional district map in the exhibit which 20 you sent to Mr. Farr. Do you need to look back 21 at it? 22 A. No. I recollect from that exhibit that that was 23 asking when did I make a trip to North Carolina. 24 Q. Were you working on congressional districts on 25 those trips?</p> <p style="text-align: right;">107</p>
<p>1 election you were using in North Carolina, which 2 was the 2008 presidential election between Obama 3 and McCain, what color would you assign to it? 4 MR. FARR: Objection to the form. 5 THE WITNESS: If I were using Obama and 6 McCain to begin with -- let me see. 60 percent, 7 you said? 8 BY MR. BONDURANT: 9 Q. (Nodding head up and down.) 10 A. It might or might not be red at 60. 11 Q. And if it -- 12 A. You can change -- you can change the percentage 13 breaks. That's one of the things you can do 14 with it. 15 Q. What percentage breaks did you use in the 16 apportionment of districts in congressional 17 districts in North Carolina in 2011? 18 A. I don't rightly remember. I'm sure I used 19 different breaks at different times. 20 Q. Do you have a record of what your percentage 21 breaks were? 22 A. No. 23 Q. But you did use percentage breaks in deciding 24 whether to assign a voter district to one 25 congressional district or another?</p> <p style="text-align: right;">106</p>	<p>1 A. No. 2 Q. On none of those trips? 3 A. Well, yes, some of the trips. The congressional 4 districts were really the last to be drawn. 5 Q. They were drawn in June and July of 2011, were 6 they not? 7 A. I don't recall the date that I actually started 8 on them. The districting of the legislative 9 districts is much more complex. 10 Q. I was not asking about the legislative 11 districts. I was asking -- 12 A. Okay. Well, I don't know exactly -- 13 MR. FARR: I think that was responsive 14 to your question. He was explaining why he had 15 not started on the congressional districts. 16 BY MR. BONDURANT: 17 Q. When you looked at the legislative guide, you 18 saw that the Legislative Service Office on 19 Page 14 had an extensive description of its 20 redistricting technology. 21 A. I'm sorry. Which page? 22 Q. Page 14. 23 A. Yes. 24 Q. Was there any data on your computer that was not 25 available to you on the Legislative Service</p> <p style="text-align: right;">108</p>

<p>1 Office computer?</p> <p>2 A. I didn't use the Legislative Service computer.</p> <p>3 It would have been available if I had been using</p> <p>4 it, yes.</p> <p>5 Q. That was not my question.</p> <p>6 My question is: Was there any data</p> <p>7 available to you on your computer for</p> <p>8 redistricting North Carolina that was not</p> <p>9 present on the Legislative Service Office</p> <p>10 computer?</p> <p>11 A. I don't recall when the election and</p> <p>12 registration data actually became available from</p> <p>13 the IT division in Legislative Services. So</p> <p>14 depending on where this came up in March, I</p> <p>15 don't believe that the census data came out</p> <p>16 until March of that year.</p> <p>17 Q. That may well be true, but you were</p> <p>18 redistricting in July of 2011 in North Carolina,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And by July of 2011, the census data had been</p> <p>22 published in March and was available both to the</p> <p>23 North Carolina Legislative Office and available</p> <p>24 to you directly from the census?</p> <p>25 A. The census data was available publicly. Anybody</p> <p style="text-align: right;">109</p>	<p>1 it would have gotten the same data from Caliper</p> <p>2 Corporation that you got?</p> <p>3 A. Yes.</p> <p>4 Q. So I repeat my question to you: Do you know of</p> <p>5 any data --</p> <p>6 A. Let me add to that answer. I don't know whether</p> <p>7 they processed that data through Maptitude or</p> <p>8 whether they processed it another way. So it</p> <p>9 would have been the same data on both systems</p> <p>10 for the census. What the chain of evidence was,</p> <p>11 how the data was transferred might have been</p> <p>12 different.</p> <p>13 Q. So sitting here today, do you know of any data</p> <p>14 that was -- that pertained to the congressional</p> <p>15 redistricting in North Carolina that was</p> <p>16 available to you on your computer that was not</p> <p>17 equally available to you on the Legislative</p> <p>18 Service Office computer?</p> <p>19 A. Again, I want to answer this honestly to you.</p> <p>20 There may have been data that we received from</p> <p>21 North Carolina that was never loaded onto my</p> <p>22 computer because it may not have been one of the</p> <p>23 races that I thought was necessary to do my</p> <p>24 work. So I can't say to you truthfully that I</p> <p>25 know that every piece of data that was on the</p> <p style="text-align: right;">111</p>
<p>1 could get it that wanted it.</p> <p>2 Q. Correct. And so I repeat my question: In July</p> <p>3 of 2011, when you were working on the maps for</p> <p>4 the 2011 congressional district, was there any</p> <p>5 data on the Maptitude laptop that you were using</p> <p>6 that was not also available to you on the</p> <p>7 North Carolina Legislative Service Office</p> <p>8 Maptitude computer program?</p> <p>9 A. I think to answer that honestly, I don't know</p> <p>10 exactly what they had on their computer in the</p> <p>11 way of election data, but I certainly had what I</p> <p>12 thought was sufficient for redistricting on</p> <p>13 there.</p> <p>14 Q. Well, you got all of your voting history data</p> <p>15 from the Legislative Service Office computer?</p> <p>16 A. That's true.</p> <p>17 Q. You got census data directly from the Census?</p> <p>18 A. No. Actually we got that from Caliper</p> <p>19 Corporation.</p> <p>20 Q. From Caliper?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Which got it from the Census?</p> <p>23 A. Yes.</p> <p>24 Q. And if the North Carolina Legislative Service</p> <p>25 Office was a subscriber to and used Maptitude,</p> <p style="text-align: right;">110</p>	<p>1 legislative system that I had available to me on</p> <p>2 my computer, as you asked.</p> <p>3 Q. My question was: Was there any data on your</p> <p>4 computer pertaining to the North Carolina</p> <p>5 congressional redistricting that was not also</p> <p>6 available to you on the Legislative Service</p> <p>7 Office's computer that used the Maptitude</p> <p>8 program?</p> <p>9 A. I'm sorry, I thought you asked that question</p> <p>10 differently, the other way around.</p> <p>11 The answer is: There was no data on my</p> <p>12 computer that North Carolina would not have. I</p> <p>13 misunderstood your question.</p> <p>14 Q. Did you read the previous page of the</p> <p>15 Legislator's Guide to North Carolina Legislative</p> <p>16 and Congressional Redistricting dealing with</p> <p>17 legislative confidentiality?</p> <p>18 A. This is Page 13 you're talking about?</p> <p>19 Q. Yes.</p> <p>20 A. Do you have anything specifically you want me to</p> <p>21 address?</p> <p>22 Q. The first question is: Did you read that page</p> <p>23 in 2011 when you were deciding whether to use</p> <p>24 the Legislative Service Office computer as</p> <p>25 opposed to using your own private laptop?</p> <p style="text-align: right;">112</p>

<p>1 MR. FARR: Objection to the form.</p> <p>2 THE WITNESS: I have no recollection of</p> <p>3 reading this page specifically, no.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. Were you aware at the time you were doing the</p> <p>6 redistricting in North Carolina that if you used</p> <p>7 the Legislative Service Office computer after</p> <p>8 the redistricting was passed all of that</p> <p>9 information would become publicly available?</p> <p>10 A. At what period did you say?</p> <p>11 Q. In 2011.</p> <p>12 A. Any time in 2011?</p> <p>13 Q. Any time in 2011.</p> <p>14 A. Again, I was not aware of the policy any time in</p> <p>15 2011.</p> <p>16 (WHEREUPON, Plaintiffs' Exhibit 16 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. BONDURANT:</p> <p>19 Q. Dr. Hofeller, can you identify Defendant's</p> <p>20 Exhibit 16 as excerpts from your first expert</p> <p>21 report in Harris and the second page is excerpts</p> <p>22 from your second expert report in Harris and a</p> <p>23 portion of your testimony at the trial?</p> <p>24 MR. FARR: I'm going to object to this</p> <p>25 exhibit because -- I'm going to object to the</p> <p style="text-align: right;">113</p>	<p>1 it.</p> <p>2 MR. FARR: I would like for it to be</p> <p>3 marked.</p> <p>4 MR. BONDURANT: That suits me. Let's</p> <p>5 make it 16A.</p> <p>6 (WHEREUPON, Plaintiffs' Exhibit 16A was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. Turn to Paragraph 23. Read Paragraph 23 aloud.</p> <p>10 A. "Political control of the</p> <p>11 redistricting process can also become an</p> <p>12 overarching factor. This is especially</p> <p>13 true when control shifts between the two</p> <p>14 political parties.</p> <p>15 "This was the case in North Carolina</p> <p>16 when, in 2010, the Republicans took</p> <p>17 control of both chambers of the General</p> <p>18 Assembly (since the Governor has no role</p> <p>19 in North Carolina redistricting).</p> <p>20 "Politics was the primary policy</p> <p>21 determinant in drafting of the New Plan.</p> <p>22 The same was true of the Old Plan except</p> <p>23 that the Democrats political policy</p> <p>24 choices were different. Professor</p> <p>25 Ansolabehere did not take any of these</p> <p style="text-align: right;">115</p>
<p>1 extent that he hasn't been able to look at his</p> <p>2 entire reports.</p> <p>3 MR. BONDURANT: I have it here. He's</p> <p>4 welcome to examine it. Let's see if he can</p> <p>5 answer the question.</p> <p>6 MR. FARR: No. I want to state my</p> <p>7 objection and then you can proceed as you want</p> <p>8 to.</p> <p>9 I think he should be allowed to see his</p> <p>10 actual report. And this document also has got</p> <p>11 headings on it which I do not think were</p> <p>12 included in Dr. Hofeller's report. That has</p> <p>13 been prepared by you or someone on your legal</p> <p>14 team.</p> <p>15 THE WITNESS: I am not going to attest</p> <p>16 to the validity of a document that I didn't make</p> <p>17 up unless I can see the document from which it</p> <p>18 came.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Dr. Hofeller, I have handed you a copy of your</p> <p>21 first expert report in Harris. I'm sorry I</p> <p>22 didn't bring extra copies.</p> <p>23 If you'll turn to Paragraph 23.</p> <p>24 MR. FARR: Can we have that marked?</p> <p>25 MR. BONDURANT: I'm not going to mark</p> <p style="text-align: right;">114</p>	<p>1 factors into account in his report."</p> <p>2 MR. FARR: Can I see that, please,</p> <p>3 before we have questions on it.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. I want to focus on a specific sentence. Is it</p> <p>6 true, as you stated in your first expert report,</p> <p>7 in 2011, politics was the primary policy</p> <p>8 determinant in drafting the New Plan, referring</p> <p>9 to the 2011 Congressional Redistricting Plan?</p> <p>10 A. I said it. It's true. I said it. Yes.</p> <p>11 Q. And your instructions in that regard came from</p> <p>12 Senator Rucho and Representative Lewis?</p> <p>13 A. Well, I think this was actually my -- my</p> <p>14 statement rather than their statement, but</p> <p>15 politics was certainly a major factor,</p> <p>16 absolutely. It is in every redistricting.</p> <p>17 Q. And would you turn to Paragraph 40.</p> <p>18 A. Thank you.</p> <p>19 Q. In Paragraph 40, you said, in part:</p> <p>20 "The General Assembly's goal was to</p> <p>21 increase Republican voting strength in</p> <p>22 New Districts 2, 3, 6, 7 and 13. This</p> <p>23 could only be accomplished by placing</p> <p>24 all the strong Democratic VTDs in either</p> <p>25 New Districts 1 or 4."</p> <p style="text-align: right;">116</p>

<p>1 Do you see that language?</p> <p>2 A. Yes. That's part of that paragraph, yes.</p> <p>3 Q. And did you carry out that goal in drafting the</p> <p>4 2011 plan to increase Republican voting strength</p> <p>5 in New Districts 2, 3, 6 and 7?</p> <p>6 A. I'm just thinking of where they were. Okay,</p> <p>7 I've read the paragraph.</p> <p>8 Would you read the question.</p> <p>9 (Record Read.)</p> <p>10 BY MR. BONDURANT:</p> <p>11 Q. 6, 7 and 13.</p> <p>12 A. Yes.</p> <p>13 Q. And you did that by taking Democratic voters</p> <p>14 from those districts and placing them either in</p> <p>15 New Districts 1 or 4?</p> <p>16 MR. FARR: Objection to the form.</p> <p>17 THE WITNESS: That's not exactly a</p> <p>18 valid description of the process.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Quote, "This could only be accomplished by</p> <p>21 placing all the strong VTDS in either</p> <p>22 Districts 1 and 4," correct?</p> <p>23 A. Yes, but that wasn't your original question.</p> <p>24 My words speak for myself and I stand</p> <p>25 by them.</p> <p style="text-align: right;">117</p>	<p>1 Is that a goal you established or was</p> <p>2 it a direction you were given?</p> <p>3 A. Okay. Can I read the rest of the paragraph into</p> <p>4 the record?</p> <p>5 Q. Just answer my question.</p> <p>6 MR. FARR: He can read the rest of the</p> <p>7 paragraph into the record if he wants.</p> <p>8 MR. BONDURANT: Only if it's necessary</p> <p>9 to answer the question.</p> <p>10 MR. FARR: Well, I assume he does since</p> <p>11 he asked to do that.</p> <p>12 THE WITNESS: In the middle of that</p> <p>13 sentence there's an "and" which continues which</p> <p>14 is part of the premise of the paragraph. So</p> <p>15 that was one of the overarching goals, and then</p> <p>16 there's an and it's -- "and to unravel what the</p> <p>17 Republicans believed to have been succession of</p> <p>18 Democrat gerrymanders in previous decades."</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Was that instruction given to you by</p> <p>21 Senator Rucho and Representative Lewis or was</p> <p>22 that your goal?</p> <p>23 A. No. That was their goal too.</p> <p>24 Q. And when you say General Assembly here, you're</p> <p>25 really speaking of Senator Rucho and</p> <p style="text-align: right;">119</p>
<p>1 Q. And were some of the strong Democratic VTDS</p> <p>2 previously in Districts 2, 3, 6, 7 and 13?</p> <p>3 A. I would have to -- there's a report that you get</p> <p>4 out of Maptitude that is called a plan</p> <p>5 components or communities of interest, I don't</p> <p>6 remember the right name, but if you ran that</p> <p>7 report you would actually get a summary of which</p> <p>8 population from which old district is contained</p> <p>9 in which new districts.</p> <p>10 So without that report, I can't say</p> <p>11 that actually that happened in the case of each</p> <p>12 one of these districts.</p> <p>13 What I would actually draw is to draw</p> <p>14 1 and 4 and then draw the districts around them.</p> <p>15 Q. Do you have the capability of generating such a</p> <p>16 report today based on the 2011 data on your</p> <p>17 computer?</p> <p>18 A. Yes.</p> <p>19 Q. In Paragraph 68, if you'll turn to that, you</p> <p>20 state, and I quote:</p> <p>21 "The General Assembly's overarching</p> <p>22 goal in 2011 was to create as many safe</p> <p>23 and competitive districts for Republican</p> <p>24 incumbents or potential candidates as</p> <p>25 possible."</p> <p style="text-align: right;">118</p>	<p>1 Representative Lewis?</p> <p>2 A. No. I'm speaking of the General Assembly. They</p> <p>3 are officers of the General Assembly. It's the</p> <p>4 General Assembly which passes a plan and</p> <p>5 approves it.</p> <p>6 Q. Did you think that the Democrats voted for a</p> <p>7 goal to create as many safe Republican districts</p> <p>8 as possible?</p> <p>9 A. I doubt it, but some of them might have voted</p> <p>10 for the plan. I don't know. I didn't pay any</p> <p>11 attention.</p> <p>12 Q. At the time you were drafting the plan, had the</p> <p>13 General Assembly voted to establish a goal of</p> <p>14 creating as many Republican districts in 2011 as</p> <p>15 possible?</p> <p>16 A. Not formally, no.</p> <p>17 Q. All of your instructions came from</p> <p>18 Representative Lewis and Senator Rucho?</p> <p>19 A. Yes.</p> <p>20 Q. There was no official action in the General</p> <p>21 Assembly prior to you're receiving those</p> <p>22 instructions?</p> <p>23 MR. FARR: Objection to the form.</p> <p>24 THE WITNESS: I don't know. I just</p> <p>25 told you that I received my instruction from</p> <p style="text-align: right;">120</p>

<p>1 Representative Lewis and Senator Rucho. 2 BY MR. BONDURANT: 3 Q. In 2011 did you attempt and experiment to see 4 how many Republican districts you could create? 5 A. Not specifically, no. 6 Q. How about generally? 7 A. I had an idea what was possible, and I think 8 what was possible is pretty much in line with 9 what was drawn. 10 Q. And what was drawn was a 10-3 Republican 11 partisan advantage plan? 12 MR. FARR: Objection to the form. 13 THE WITNESS: Again -- 14 BY MR. BONDURANT: 15 Q. Was that a "yes" or a "no"? 16 A. That has to be a "no" the way you asked that 17 question. 18 Q. What plan -- what did you think was possible? 19 A. I think it was possible to draw ten districts in 20 which the Republicans would either be most 21 likely to win or would have an opportunity to 22 win. 23 Q. And how many districts would the Democrats be 24 likely to win or have an opportunity to win? 25 A. I would have to go back and look at the</p> <p style="text-align: right;">121</p>	<p>1 Q. I'm going to ask you about this sentence: 2 "The Republicans' primary goal was 3 to create as many districts as possible 4 in which GOP candidates would be able to 5 successfully compete for office." 6 Did I read that correctly? 7 A. Yes. 8 Q. And this time instead of saying General 9 Assembly, you said the Republicans. You're 10 referring to Senators Rucho -- Senator Rucho and 11 Representative Lewis? 12 MR. FARR: Objection. 13 THE WITNESS: In their -- in their -- 14 I'm trying to draw out the right word. In their 15 capacity as chairmen of the two redistricting 16 committees. 17 BY MR. BONDURANT: 18 Q. So it was a Republican goal to create as many 19 districts as possible in which GOP candidates 20 would be able to successfully compete for office 21 in 2011? 22 A. Yes. You've added to the sentence, but I assume 23 it was 2011, yes. 24 Q. Well, this report was given in the Harris case 25 in connection with the 2011 redistricting.</p> <p style="text-align: right;">123</p>
<p>1 statistics, but I'm sure it was more than three. 2 Q. How many more than three? 3 A. I'd have to go back and look at the statistics. 4 Q. Let's turn to your second expert report, which 5 I'll ask the court reporter to make as Hofeller 6 Exhibit 16B. 7 (WHEREUPON, Plaintiffs' Exhibit 16B was 8 marked for identification.) 9 BY MR. BONDURANT: 10 Q. Turn to Paragraph 9. 11 MR. FARR: I'm sorry to do this. Can 12 we take a break and get a copy of that. I 13 really don't want my witness to be 14 cross-examined on an exhibit that I don't have. 15 MR. BONDURANT: Sure, I don't mind. 16 THE VIDEOGRAPHER: Off record at 17 2:20 p.m. 18 (Brief Recess.) 19 THE VIDEOGRAPHER: On record at 2:32 20 p.m. 21 (Record Read.) 22 BY MR. BONDURANT: 23 Q. If you'll turn to Paragraph 9 of your second 24 report. 25 A. Okay.</p> <p style="text-align: right;">122</p>	<p>1 A. Absolutely. 2 Q. And that's what you were talking about. 3 A. Yes. 4 Q. Would it be fair to say that in 2016 the 5 Republican goal as conveyed to you by 6 Senator Rucho and Representative Lewis, their 7 primary goal was to create as many districts as 8 possible in which GOP candidates would be able 9 to successfully compete for office? 10 A. No. 11 MR. FARR: Objection. 12 You can answer it. 13 THE WITNESS: Sorry. 14 BY MR. BONDURANT: 15 Q. That was not their primary goal in 2016? 16 A. No. 17 Q. What was their goal in terms -- their partisan 18 goal? 19 A. Well, you didn't say partisan goal. You said 20 goal, primarily goal. 21 Q. With that amendment, was their partisan goal to 22 create as many -- 23 A. Could you read back the first question that he 24 asked me, please. 25 (Record Read.)</p> <p style="text-align: right;">124</p>

<p>1 THE WITNESS: My answer was no. Okay.</p> <p>2 BY MR. BONDURANT:</p> <p>3 Q. What was their primary goal?</p> <p>4 A. The primary goal was to draw a map that the</p> <p>5 clerk would approve of so they would follow the</p> <p>6 clerk's directive.</p> <p>7 Q. And the primary partisan goal was to achieve a</p> <p>8 10-3 Republican advantage in 2016, was it not?</p> <p>9 A. That was a goal, yes.</p> <p>10 Q. And that was their primary partisan goal?</p> <p>11 A. What you describe by definition as a partisan</p> <p>12 goal, but it wasn't their primary goal as far as</p> <p>13 the drafting of the plan.</p> <p>14 Q. You go on to say in Paragraph 9 after stating</p> <p>15 the primary goal:</p> <p>16 "As a result of the 2010 General</p> <p>17 Elections, Democrats were elected in 7</p> <p>18 districts (1, 4, 7, 8, 11, 12 and 13)</p> <p>19 while Republicans were elected in 6</p> <p>20 districts (2, 3, 5, 5, 9 and 10).</p> <p>21 "Following the 2014 General</p> <p>22 Election, Democrats were elected in only</p> <p>23 3 districts (1, 4 and 12). Republicans</p> <p>24 were elected in the 10 remaining</p> <p>25 districts."</p> <p style="text-align: right;">125</p>	<p>1 concentrating Democratic voting strength</p> <p>2 in Districts 1, 4 and 12," and you again</p> <p>3 site Map 3 attached to your report.</p> <p>4 Did I read it correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Was that the strategy which you as the principal</p> <p>7 architect of the map followed in achieving the</p> <p>8 Republicans' primary goal?</p> <p>9 A. In that plan?</p> <p>10 Q. Yes.</p> <p>11 MR. FARR: Objection.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. And so you had said previously that you wanted</p> <p>15 to create districts in which Republicans would</p> <p>16 have an opportunity to elect Republican</p> <p>17 candidates, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And conversely, you want to minimize the number</p> <p>20 of districts in which Democrats would have an</p> <p>21 opportunity to elect a Democratic candidate?</p> <p>22 A. Correct.</p> <p>23 Q. And you did that by concentrating as many</p> <p>24 Democratic voters as possible into three</p> <p>25 specific districts, 1, 4 and 12?</p> <p style="text-align: right;">127</p>
<p>1 That was your statement under oath in</p> <p>2 Harris in Paragraph 9?</p> <p>3 A. Yes.</p> <p>4 Q. Was it true?</p> <p>5 A. Were the facts as I stated them true?</p> <p>6 Q. Yes.</p> <p>7 A. Following the 2014 general election, yes, it was</p> <p>8 true.</p> <p>9 Q. And in Paragraph 10, you explain the strategy</p> <p>10 that you used to accomplish the goal in</p> <p>11 Paragraph 9; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. You state:</p> <p>14 "The Republican strategy was to</p> <p>15 weaken Democratic strength in Districts 7,</p> <p>16 8 and 11; and to completely revamp</p> <p>17 District 13, converting it into a</p> <p>18 competitive GOP district.</p> <p>19 "At the same time, 2 GOP-held</p> <p>20 districts (Districts 2 and 9) needed</p> <p>21 marginal improvement in GOP voting</p> <p>22 strength" and then you cite a map which is</p> <p>23 attached.</p> <p>24 Continuing quoting:</p> <p>25 "This policy goal was attained by</p> <p style="text-align: right;">126</p>	<p>1 A. Correct.</p> <p>2 Q. And removing as many Democratic voters as you</p> <p>3 could from the districts that you wanted to</p> <p>4 create as districts in which Republicans would</p> <p>5 be elected?</p> <p>6 A. As many as was reasonably possible, yes.</p> <p>7 Q. And the Democrats who remained in the districts</p> <p>8 that you had decided would be Republican</p> <p>9 opportunity-to-elect districts, those Democrats'</p> <p>10 opportunities to elect a Democratic candidate of</p> <p>11 their choice would be diminished, would they</p> <p>12 not?</p> <p>13 MR. FARR: Objection.</p> <p>14 THE WITNESS: It would depend on what</p> <p>15 their choice was.</p> <p>16 BY MR. BONDURANT:</p> <p>17 Q. Their opportunity to elect a Democratic</p> <p>18 candidate in the districts in which you</p> <p>19 increased Republican voting strength would be</p> <p>20 diminished, would it not?</p> <p>21 A. Yes.</p> <p>22 Q. Did you use the same strategy of assigning</p> <p>23 voters to the districts that you wanted to be</p> <p>24 Republican opportunity-to-elect districts based</p> <p>25 on their voting history in the 2016</p> <p style="text-align: right;">128</p>

<p>1 reapportionment as you did in 2011?</p> <p>2 A. It was a strategy, but it was not the principal</p> <p>3 strategy.</p> <p>4 Q. What was the principal strategy?</p> <p>5 A. The principal strategy was to follow criteria</p> <p>6 which would draw a plan which would be</p> <p>7 acceptable to the Court.</p> <p>8 Q. The criteria that you followed in 2016 were</p> <p>9 written criteria, were they not?</p> <p>10 A. The committee in 2016 -- we're talking about</p> <p>11 2016?</p> <p>12 Q. Yes.</p> <p>13 A. -- adopted a criteria statement.</p> <p>14 Q. And did you follow those criteria?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have a hand in drafting those criteria?</p> <p>17 A. Not in the formal sense, no. I may have</p> <p>18 discussed it with -- probably did discuss it</p> <p>19 with the chairman.</p> <p>20 Q. Did you --</p> <p>21 A. I couldn't have proceeded on the plan without</p> <p>22 their instructions on what criteria I was</p> <p>23 supposed to follow.</p> <p>24 Q. Did you start working on the plan before the</p> <p>25 criteria were approved by the committee?</p> <p style="text-align: right;">129</p>	<p>1 Q. No oral communications? No written</p> <p>2 communications?</p> <p>3 A. No.</p> <p>4 Q. No nothing.</p> <p>5 (WHEREUPON, Plaintiffs' Exhibit 18 was</p> <p>6 marked for identification.)</p> <p>7 MR. FARR: I'm going to register the</p> <p>8 same objection. I prefer to be examining him on</p> <p>9 the actual report.</p> <p>10 BY MR. BONDURANT:</p> <p>11 Q. Dr. Hofeller, I've handed you a document marked</p> <p>12 Exhibit 18. It is, in part, excerpts from your</p> <p>13 first expert report and your deposition in</p> <p>14 Harris. You have your first expert report</p> <p>15 before you. It is Exhibit 16A.</p> <p>16 A. I do, yes. Thank you.</p> <p>17 Q. If you'll turn to Paragraph 33.</p> <p>18 A. Do you have a page number?</p> <p>19 Q. The paragraphs are numbered.</p> <p>20 A. I know that.</p> <p>21 Q. In Paragraph 33 you say, in part:</p> <p>22 "My experience in drafting and</p> <p>23 evaluating plans has continued to</p> <p>24 reinforce my expert opinion that the best</p> <p>25 predictor of future election success is</p> <p style="text-align: right;">131</p>
<p>1 A. Yes.</p> <p>2 Q. How far in advance of the approval of the</p> <p>3 criteria on February 16, 2016, did you start</p> <p>4 working on a plan for the reapportionment in</p> <p>5 2016 of congressional districts?</p> <p>6 A. I think it was either probably the day after the</p> <p>7 decision came out. It might have been the same</p> <p>8 day, but that was late in the day. So it would</p> <p>9 have had to have been the next day.</p> <p>10 Q. The decision came out, do you recall, on</p> <p>11 February 5, 2016, that is, the decision in the</p> <p>12 Harris case?</p> <p>13 A. I knew about the decision, and I knew I was</p> <p>14 going to be asked to draft a new plan, yes.</p> <p>15 Q. Did you do anything to start drafting plans 2016</p> <p>16 prior to the decision in February, on</p> <p>17 February 5th?</p> <p>18 A. No.</p> <p>19 Q. Did you have any communications with</p> <p>20 Senator Rucho or Representative Lewis about the</p> <p>21 possibility that you might be asked to draft a</p> <p>22 new plan in the Harris case between the close of</p> <p>23 the trial at the end of October and the decision</p> <p>24 on February 5th?</p> <p>25 A. Not that I can recall. I don't think so.</p> <p style="text-align: right;">130</p>	<p>1 past voting behavior."</p> <p>2 And I'll just stop there.</p> <p>3 A. Well, I'll go on to say not registration. I</p> <p>4 made that statement, yes.</p> <p>5 Q. And you go on to elaborate that:</p> <p>6 "This is clearly the case as more</p> <p>7 and more voters are tending to register</p> <p>8 non-partisan or independent."</p> <p>9 A. Question?</p> <p>10 Q. That was your testimony under oath then?</p> <p>11 A. Yes.</p> <p>12 Q. And it is your opinion now?</p> <p>13 A. Yes.</p> <p>14 Q. And it was past voting behavior that you used in</p> <p>15 assigning VTDs to various congressional</p> <p>16 districts in drafting the 2016 plan?</p> <p>17 MR. FARR: Objection.</p> <p>18 THE WITNESS: In part. It was not the</p> <p>19 principal reason that a majority of the VTDs</p> <p>20 were assigned to various districts in 2016 plan.</p> <p>21 BY MR. BONDURANT:</p> <p>22 Q. In 2011 you used voting history to assign</p> <p>23 districts -- voting tabulation districts to</p> <p>24 various congressional districts to achieve a</p> <p>25 partisan advantage, did you not?</p> <p style="text-align: right;">132</p>

<p>1 A. I think with the exception of the first 2 district, for the most part, although some -- 3 some of the areas in the state were assigned as 4 whole counties, and in whole counties you're 5 certainly not looking at data on the precinct 6 level. 7 Q. Let me go back and see if I sort of understand 8 your methodology. 9 When you approached the drafting of the 10 2011 plan, did you start by drafting districts 11 for the whole state, or did you start by 12 drafting individual districts to construct them 13 to create a Republican or Democratic advantage? 14 A. The first district that was drawn in the 2011 15 map was the 1st district, which was a Section 2 16 VRA district. So in that district it was 17 important to make sure that the minority voting 18 strength was correct. 19 So from then on I was using political 20 voting history as the thematic for splitting 21 counties among VTDs when I was actually 22 splitting a county. 23 Q. So let me see if I understand you. 24 So you start out with the first 25 district with -- because you regarded it as a</p> <p style="text-align: right;">133</p>	<p>1 district block by block, we'd still be building 2 the districts. 3 Q. How did you build the individual districts? 4 A. The first level that you look at for 5 redistricting is actually the county level. So 6 a lot of counties in the state go into districts 7 in whole pieces and then you look at how you're 8 going to divide the counties, which is done VTD 9 by VTD. 10 Q. So if you looked at a particular county and it 11 was a heavy Republican district, you would put 12 it in a district that you wanted to make a 13 Republican congressional district, and if you 14 saw a county that was a heavy Democratic 15 district, you would assign it to either 1 or 4 16 or 12, one of the districts that you were trying 17 to make a predominant Democratic district? 18 A. Okay. Well, one of your statements in that 19 premise was incorrect. 20 Q. Just tell me what you did. 21 A. Well, okay, some of the districts have to be the 22 way they are. For instance, the 11th district, 23 which I believe is in the far western corner of 24 the state, is going to be shaped the way it is 25 for the most part because it is in the corner of</p> <p style="text-align: right;">135</p>
<p>1 Voting Rights Act district with a minimum 2 African American population of 50.1 percent? 3 A. I don't think there was a specific target. We 4 knew that 50.1 percent was an important mark 5 there, yes, and we wanted to have it over 6 50 percent. 7 Q. Once you drew the first district to make sure it 8 would be a majority black voting age district, 9 you then proceeded with other districts using 10 political data? 11 A. Yes. In the -- after that, yes, although there 12 were some other reasons why the 1st became -- 13 was placed in its actual enacted format too. 14 Q. That has already been litigated in the Harris 15 case. I don't want to relitigate it one way or 16 the other. I'm simply -- 17 A. That's obvious. 18 Q. -- trying to understand the methodology that you 19 started with the first district and then you 20 proceeded block by block to build individual 21 districts that would create a Republican or a 22 Democratic advantage until you came up with a 23 statewide plan for all 13 districts. 24 A. No, that's not -- again, the premise of your 25 question gives me a problem. If you built the</p> <p style="text-align: right;">134</p>	<p>1 the state and there's not really much you can 2 do. 3 Another factor you're looking at when 4 you're drawing districts are preservation of 5 communities of interest and making sure that 6 incumbents don't get paired, to the extent that 7 it's possible. So a lot of whole counties go in 8 there not because of what their actual voting 9 strength is but because of their locations. 10 Q. All right. In 2011 you in fact paired four 11 incumbents, did you not? 12 A. I don't remember. 13 Q. All four were Democrats. 14 A. I don't remember. 15 Q. In drafting the 2011 plan, you weighed partisan 16 advantage for the Republican Party more heavily 17 than compliance with the Voting Rights Act, did 18 you not? 19 A. You have to comply with -- 20 Q. Please answer yes or no. 21 MR. FARR: If it can be answered yes or 22 no. 23 THE WITNESS: I think I have to say no 24 to that question. 25 BY MR. BONDURANT:</p> <p style="text-align: right;">136</p>

<p>1 Q. Well, let me show you your deposition.</p> <p>2 A. Okay.</p> <p>3 MR. FARR: I'd like to see it first</p> <p>4 before you give it to him.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. Look at Page 24 in your deposition taken in the</p> <p>7 Harris case May 6, 2014, beginning at Line 15</p> <p>8 and continuing through Line 19.</p> <p>9 MR. FARR: May I see that, please. And</p> <p>10 where are we looking at, Emmet?</p> <p>11 MR. BONDURANT: Line 15.</p> <p>12 MR. FARR: Okay. Line 15 through 24?</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. Beginning Line 15 --</p> <p>15 A. I mean, I have to get it in front of me. I</p> <p>16 can't see that far.</p> <p>17 Are you looking at 15, 16 and 17?</p> <p>18 Here, let me just undo it so we don't have to</p> <p>19 pass the whole book back and forth.</p> <p>20 Q. Beginning Line 16 -- Line 15 you were asked the</p> <p>21 following questions:</p> <p>22 "As you were drawing the districts,</p> <p>23 did you weigh partisan advantage more</p> <p>24 heavily in compliance with the Voting</p> <p>25 Rights Act?"</p> <p style="text-align: right;">137</p>	<p>1 "What was that estimate?"</p> <p>2 "That -- that three of the</p> <p>3 districts were most certainly going to</p> <p>4 be strong Democratic districts and that</p> <p>5 the remaining districts would be more</p> <p>6 competitive or remain competitive for</p> <p>7 Republican candidates."</p> <p>8 Question: "And those three strong</p> <p>9 Democratic districts were?"</p> <p>10 Answer: "1, 4 and 12."</p> <p>11 "Okay." Question: "Okay. What was</p> <p>12 the result of the 2012 election with</p> <p>13 regard to partisan advantage?"</p> <p>14 Answer: "Four Democrats won</p> <p>15 election in the House of Representatives --</p> <p>16 to the House of Representatives, U.S.</p> <p>17 House of Representatives, and the</p> <p>18 remainder were Republicans."</p> <p>19 Question: "Now, when you -- as you</p> <p>20 were drawing the plan, did Senator Rucho</p> <p>21 and Representative Lewis give you any</p> <p>22 instructions as to whether partisan</p> <p>23 advantage or competitiveness was to take</p> <p>24 precedence over compliance with the</p> <p>25 Voting Rights Act as you drew the</p> <p style="text-align: right;">139</p>
<p>1 Your answer was: "For the plan as a</p> <p>2 whole?"</p> <p>3 The question was "Then yes."</p> <p>4 Your answer beginning at Line 20:</p> <p>5 "For the plan as a whole, I would</p> <p>6 have to say yes."</p> <p>7 MR. FARR: And then what else did he</p> <p>8 say?</p> <p>9 BY MR. BONDURANT:</p> <p>10 Q. Go ahead and read the rest of it.</p> <p>11 A. Okay. You're taking this statement heavily out</p> <p>12 of context here.</p> <p>13 Q. Just read it.</p> <p>14 A. Okay. Let's start back on the previous page,</p> <p>15 then. At Line 10 on the previous page:</p> <p>16 "And what were those instructions?"</p> <p>17 "My instructions were to draw the</p> <p>18 plan to make it -- have an increased</p> <p>19 number of competitive districts for GOP</p> <p>20 candidates."</p> <p>21 Question: "Did you make any</p> <p>22 evaluation of the likely results --</p> <p>23 partisan results of the plan enacted by</p> <p>24 the General Assembly?"</p> <p>25 Answer: "Yes."</p> <p style="text-align: right;">138</p>	<p>1 districts?"</p> <p>2 Answer: "No."</p> <p>3 "Again, as you were drawing the</p> <p>4 districts, did you weigh partisan</p> <p>5 advantage more heavily than compliance</p> <p>6 with the Voting Rights Act?"</p> <p>7 Answer: "For the plan as a whole?"</p> <p>8 "Yes."</p> <p>9 Or that was -- I'm sorry. I said "For</p> <p>10 the plan as a whole" and then the question was</p> <p>11 "yes."</p> <p>12 "For the plan as a whole, I would</p> <p>13 have to say yes, but the plan was</p> <p>14 compliant with the Voting Rights Act.</p> <p>15 There were many, many -- 12 of the 13</p> <p>16 districts which were drawn as political</p> <p>17 districts."</p> <p>18 Q. That was your testimony then?</p> <p>19 A. It's my testimony now.</p> <p>20 Q. Now, turn to Page 25. Would you agree that</p> <p>21 compliance with the Voting Rights Act was not</p> <p>22 the predominant factor in your drawing of the</p> <p>23 congressional districts in 2011?</p> <p>24 A. Is there something you want to point to here?</p> <p>25 Q. Well, I've asked you the question first.</p> <p style="text-align: right;">140</p>

<p>1 Was it true that compliance with the</p> <p>2 Voting Rights Act was not a predominant factor</p> <p>3 in your drawing of the congressional districts</p> <p>4 in 2011?</p> <p>5 Can you answer it without reading your</p> <p>6 deposition?</p> <p>7 MR. FARR: Objection.</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. If you don't remember, I'll show you your</p> <p>10 deposition.</p> <p>11 A. Again, you're asking the question out of</p> <p>12 context, sir.</p> <p>13 Q. No. I'm asking you the question that was asked.</p> <p>14 MR. FARR: Well, then he can explain</p> <p>15 the context.</p> <p>16 THE WITNESS: Okay. If you're</p> <p>17 asking --</p> <p>18 BY MR. BONDURANT:</p> <p>19 Q. Let me get the question repeated.</p> <p>20 A. Okay.</p> <p>21 Q. Is it true in 2011 that compliance with the</p> <p>22 Voting Rights Act was not the predominant factor</p> <p>23 in the drawing of the congressional districts?</p> <p>24 Yes or no?</p> <p>25 MR. FARR: I object to the form of the</p> <p style="text-align: right;">141</p>	<p>1 Q. Do you see the question beginning with "Did</p> <p>2 partisan advantage take precedence over</p> <p>3 compliance with the Voting Rights Act"?</p> <p>4 A. Can you tell me which line you're reading from.</p> <p>5 Q. You have to share it with me. Right at the top</p> <p>6 of the page, beginning with Line 1.</p> <p>7 MR. FARR: Can I see that, please.</p> <p>8 THE WITNESS: Absolutely. You might</p> <p>9 look at the preceding page at the bottom.</p> <p>10 BY MR. BONDURANT:</p> <p>11 Q. Top of Page 27 you ask:</p> <p>12 "Did partisan advantage take</p> <p>13 precedence over compliance with the</p> <p>14 Voting Rights Act?"</p> <p>15 What was your answer?</p> <p>16 MR. FARR: I object to the question</p> <p>17 because I think this is related to District 12</p> <p>18 because I just looked at the deposition.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Can you answer the question?</p> <p>21 A. What is the question? I don't understand the</p> <p>22 question. You read a statement.</p> <p>23 Q. Starting at Line 24 on Page 11:</p> <p>24 "Let me talk about District 12 for</p> <p>25 just a minute. When you were drawing</p> <p style="text-align: right;">143</p>
<p>1 question.</p> <p>2 THE WITNESS: Okay, I'm a little bit</p> <p>3 confused by your negatives there.</p> <p>4 It was not the predominant factor in</p> <p>5 the drawing of the entire plan.</p> <p>6 Does that answer your question?</p> <p>7 BY MR. BONDURANT:</p> <p>8 Q. That answered it fine.</p> <p>9 A. Good. Now I'll embellish by saying it was a</p> <p>10 factor in District 1.</p> <p>11 Q. It was a factor in District 1 but not in the</p> <p>12 entire plan in 2011?</p> <p>13 A. With the exception of District 1, it was not a</p> <p>14 factor, no.</p> <p>15 Q. Would it also be true that partisan advantage</p> <p>16 took precedence over compliance with the Voting</p> <p>17 Rights Act in your drafting of the 2011 plan?</p> <p>18 MR. FARR: Objection.</p> <p>19 THE WITNESS: Again, the way you ask</p> <p>20 the question I have to say no.</p> <p>21 BY MR. BONDURANT:</p> <p>22 Q. Well, turn to Page 27 of your deposition.</p> <p>23 A. Do you want me to explain why I say no?</p> <p>24 Q. Page 27 will be fine.</p> <p>25 A. Okay. I'll get it.</p> <p style="text-align: right;">142</p>	<p>1 District 12, did partisan advantage take</p> <p>2 precedence over the Voting Rights Act?"</p> <p>3 Your answer was: "Yes."</p> <p>4 Is that true?</p> <p>5 A. Yes in the case of District 12, but you made the</p> <p>6 original question out of context.</p> <p>7 Q. Was it also true with Districts 2 through 13?</p> <p>8 A. You're asking me a new question now?</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. And that the only district in which compliance</p> <p>12 with the Voting Rights Act took precedence over</p> <p>13 partisan advantage with the Republican Party was</p> <p>14 District 1 in the 2011 redistricting?</p> <p>15 MR. FARR: Objection.</p> <p>16 BY MR. BONDURANT:</p> <p>17 Q. Do you need it read back?</p> <p>18 A. I can't -- yes, please, I need the whole context</p> <p>19 of this question. I'm not trying to evade your</p> <p>20 question. I just want to make sure I give you a</p> <p>21 truthful answer.</p> <p>22 Are we talking with regard to this</p> <p>23 document?</p> <p>24 MR. FARR: Just read the question back.</p> <p>25 (Record Read.)</p> <p style="text-align: right;">144</p>

<p>1 MR. FARR: I objected.</p> <p>2 You may answer if you can.</p> <p>3 THE WITNESS: Read it again. I'm</p> <p>4 sorry. I'm just not --</p> <p>5 (Record Read.)</p> <p>6 THE WITNESS: The answer to your</p> <p>7 question is yes.</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. Now, in 2016 you were instructed not to consider</p> <p>10 any racial data in drafting the 2016 plan,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Without racial data, did you consider, in</p> <p>14 drafting the plan, compliance with the Voting</p> <p>15 Rights Act in drafting any of the districts?</p> <p>16 A. I did not use political data in drafting the</p> <p>17 plan.</p> <p>18 Q. You didn't use any political data --</p> <p>19 A. I'm sorry. Any demographic data, racial, ethnic</p> <p>20 data.</p> <p>21 Q. And therefore you did not consider compliance</p> <p>22 with the Voting Rights Act in drafting the 2016</p> <p>23 plan because you had no access to racial data?</p> <p>24 MR. FARR: I'm going to object to the</p> <p>25 form of the question.</p> <p style="text-align: right;">145</p>	<p>1 The second page?</p> <p>2 MR. BONDURANT: Yeah.</p> <p>3 THE WITNESS: Okay, I've read it.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. Do you remember giving that testimony?</p> <p>6 A. Yes.</p> <p>7 Q. Was that testimony true?</p> <p>8 A. Yes.</p> <p>9 Q. Is it true today?</p> <p>10 A. Yes.</p> <p>11 Q. So let me see if I can understand it.</p> <p>12 From your experience, based on looking</p> <p>13 at what you call political data, which is the</p> <p>14 voting results in past elections, the political</p> <p>15 nature of a precinct or voter district does not</p> <p>16 change over time unless there is a change in the</p> <p>17 makeup of the population of the district?</p> <p>18 A. Okay, that's not exactly what I remember this</p> <p>19 statement meaning in the context of the trial,</p> <p>20 but, again, since you confused me by your</p> <p>21 context, I have to have it read to me again.</p> <p>22 MR. BONDURANT: Would you read the</p> <p>23 questions back.</p> <p>24 (Record Read.)</p> <p>25 THE WITNESS: I have to answer that yes</p> <p style="text-align: right;">147</p>
<p>1 THE WITNESS: I did not use political</p> <p>2 data in drafting the plan -- or registration --</p> <p>3 I'm sorry, I'm getting this wrong.</p> <p>4 I did not use racial or ethnic data in</p> <p>5 drafting the plan.</p> <p>6 BY MR. BONDURANT:</p> <p>7 Q. You used only political data?</p> <p>8 A. That's correct.</p> <p>9 Q. And political data -- by political data you</p> <p>10 meant the results of statewide elections from</p> <p>11 2008 to 2014 excluding the presidential races in</p> <p>12 2008 and 2012?</p> <p>13 A. That's true.</p> <p>14 Are we through with this?</p> <p>15 Q. Maybe.</p> <p>16 I would like you to turn to the second</p> <p>17 page of Exhibit 18.</p> <p>18 MR. THORPE: It's under the binder.</p> <p>19 THE WITNESS: I'm sorry. It's</p> <p>20 underneath.</p> <p>21 BY MR. BONDURANT:</p> <p>22 Q. On that page I have excerpted testimony from the</p> <p>23 trial. You're perfectly welcome to look at that</p> <p>24 testimony at Page 525 of the Harris trial.</p> <p>25 MR. FARR: What are we looking at now?</p> <p style="text-align: right;">146</p>	<p>1 but with a qualification.</p> <p>2 BY MR. BONDURANT:</p> <p>3 Q. What is that qualification?</p> <p>4 A. I think the underlying nature of the precinct,</p> <p>5 with respect to precincts surrounding it in</p> <p>6 particular, will not change, but its voting</p> <p>7 behavior could change. If you take a strong</p> <p>8 precinct that might have been strong Republican</p> <p>9 precinct before redistricting and you put it in</p> <p>10 a heavily Democratic district, it might modify</p> <p>11 its behavior.</p> <p>12 So I think generally your statement is</p> <p>13 true but specifically not necessarily true.</p> <p>14 Q. In your trial testimony, you were questioned on</p> <p>15 why you used only the results of the 2008</p> <p>16 Obama-McCain as your election data in drafting</p> <p>17 the 2011 plan. Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. And you said that you thought that was</p> <p>20 representative but that it was also correlated</p> <p>21 with the results in other statewide elections at</p> <p>22 which you had looked.</p> <p>23 A. Yes.</p> <p>24 Q. Therefore it didn't make a lot of difference</p> <p>25 whether you used the Obama-McCain results or the</p> <p style="text-align: right;">148</p>

<p>1 results in other statewide elections as far as</p> <p>2 determining whether the districts were going to</p> <p>3 in the future vote Democratic or Republican.</p> <p>4 A. Generally true, yes.</p> <p>5 Q. And you said specifically "I know from</p> <p>6 experience that the underlying political nature</p> <p>7 of the precincts in the state does not change no</p> <p>8 matter what race you use to analyze it."</p> <p>9 Do you see that language?</p> <p>10 A. I do.</p> <p>11 Q. Was that true?</p> <p>12 A. It's true in the context of the word</p> <p>13 "underlying," yes, and by that, really I'm</p> <p>14 talking about the ranking of the precincts one</p> <p>15 to another. They might all vote a little bit</p> <p>16 more one way or another, but they'll be</p> <p>17 generally in the same spot on a continuum of all</p> <p>18 the precincts.</p> <p>19 Q. Whether it was deep red, sort of red, light blue</p> <p>20 or dark blue in your ranking of districts?</p> <p>21 A. I think I could generally agree with that, yes.</p> <p>22 There might be some context in which it would</p> <p>23 not be true. I don't think you want to go into</p> <p>24 that now.</p> <p>25 Q. Was that still the case at the time you did the</p> <p style="text-align: right;">149</p>	<p>1 MR. FARR: It's certainly customary</p> <p>2 here in North Carolina.</p> <p>3 MR. SPEAS: I don't believe that's</p> <p>4 customary.</p> <p>5 MR. FARR: Well, I believe it is,</p> <p>6 Eddie.</p> <p>7 MR. SPEAS: Well, I've never heard any</p> <p>8 such rule.</p> <p>9 MR. FARR: Well, you know what, we can</p> <p>10 call the magistrate up today and see if we are</p> <p>11 entitled to have copies of exhibits. Or what we</p> <p>12 can do --</p> <p>13 MR. SPEAS: Of a deposition in advance?</p> <p>14 MR. FARR: Or what we can do is stop</p> <p>15 the deposition and make copies of all these</p> <p>16 things before the witness is examined. We can</p> <p>17 do it that way, if you'd like, like we did the</p> <p>18 report. I'm entitled to see the exhibit while</p> <p>19 he's being cross-examined.</p> <p>20 MR. SPEAS: You have copies of every</p> <p>21 one of these.</p> <p>22 MR. FARR: I didn't know what you were</p> <p>23 going to use today.</p> <p>24 MR. SPEAS: Why didn't you bring the</p> <p>25 documents that have to do with the case,</p> <p style="text-align: right;">151</p>
<p>1 drafting of the 2016 plan?</p> <p>2 A. Yes.</p> <p>3 Q. And then in the next sentence, on Page 525, you</p> <p>4 said:</p> <p>5 "The only way the underlying</p> <p>6 political demographics change in a</p> <p>7 precinct is if the precinct is changed in</p> <p>8 the nature of the people that are living</p> <p>9 in the precinct. So once a precinct has</p> <p>10 found to be a strong Democratic precinct,</p> <p>11 it's probably going to act as a strong</p> <p>12 Democratic precinct in every subsequent</p> <p>13 election. The same would be true of</p> <p>14 Republican precincts."</p> <p>15 MR. FARR: Can he look at the</p> <p>16 transcript, please.</p> <p>17 MR. BONDURANT: Yes.</p> <p>18 MR. FARR: And also, I'm going to make</p> <p>19 a request tomorrow I'm going to want to get</p> <p>20 copies of any exhibits that you're going to use</p> <p>21 to cross-examine Senator Rucho or Representative</p> <p>22 Lewis which is pretty customary here in</p> <p>23 North Carolina.</p> <p>24 MR. BONDURANT: It's certainly not</p> <p>25 covered by the federal rules.</p> <p style="text-align: right;">150</p>	<p>1 Mr. Farr.</p> <p>2 MR. FARR: Are you serious, Eddie?</p> <p>3 MR. SPEAS: Damn right I'm serious.</p> <p>4 MR. FARR: You're serious I should have</p> <p>5 known you were going to cross-examine him on</p> <p>6 trial testimony?</p> <p>7 MR. SPEAS: You should have know your</p> <p>8 witness was going to be asked about his prior</p> <p>9 testimony.</p> <p>10 MR. FARR: I should have known he was</p> <p>11 going to be cross-examined on exhibits that</p> <p>12 weren't produced for us before the deposition?</p> <p>13 MR. BONDURANT: Should we go back on</p> <p>14 the record for this deposition instead of</p> <p>15 resolving other problems?</p> <p>16 MR. FARR: Well, I would like to have</p> <p>17 copies of exhibits that are going to be used to</p> <p>18 cross-examine my witness tomorrow.</p> <p>19 MR. BONDURANT: Your question is under</p> <p>20 advisement.</p> <p>21 BY MR. BONDURANT:</p> <p>22 Q. Do you have Page 525 before you from which I</p> <p>23 just quoted, Dr. Hofeller?</p> <p>24 A. Okay. You're specifically talking about the</p> <p>25 second section that's underlined or shaded</p> <p style="text-align: right;">152</p>

<p>1 yellow, right?</p> <p>2 Q. The sentence beginning "The only way the</p> <p>3 underlying political demographics change" and</p> <p>4 ending with "The same would be true of</p> <p>5 Republican precincts."</p> <p>6 A. Yes.</p> <p>7 Q. That was your testimony under oath then and it</p> <p>8 would be your opinion now when you -- in</p> <p>9 connection with your drafting of the 2016 plan?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall that the results of the 2011 plan</p> <p>12 were that in 2012 the Democrats carried a</p> <p>13 majority of the statewide vote both for</p> <p>14 president and the majority of the statewide vote</p> <p>15 for congressional elections?</p> <p>16 A. I don't know. I have to see that data put</p> <p>17 before me.</p> <p>18 Q. But the result of the 2012 election was that</p> <p>19 instead of 10-3 Republicans that you projected</p> <p>20 it, the Republicans took 9 seats with 49 percent</p> <p>21 of the vote and the Democrats took only 4 seats</p> <p>22 with 51 percent of the vote.</p> <p>23 A. I don't agree with --</p> <p>24 MR. FARR: Objection to the form.</p> <p>25 THE WITNESS: -- with the first premise</p> <p style="text-align: right;">153</p>	<p>1 THE VIDEOGRAPHER: Off the record at</p> <p>2 3:18 p.m.</p> <p>3 (Brief Recess.)</p> <p>4 THE VIDEOGRAPHER: On record at</p> <p>5 3:32 p.m.</p> <p>6 MR. FARR: With the indulgence of</p> <p>7 plaintiff's counsel, I did want to make a</p> <p>8 statement: That under Local Rule 30.1(d), the</p> <p>9 Middle District says that deposing counsel shall</p> <p>10 provide to the witness's counsel a copy of all</p> <p>11 documents shown to the witness during the</p> <p>12 deposition. The copy shall be provided either</p> <p>13 before the deposition beginnings or</p> <p>14 contemporaneously of the showing of each</p> <p>15 document with the witness.</p> <p>16 MR. BONDURANT: Which is precisely the</p> <p>17 procedure we're following of giving you copies</p> <p>18 of each document as it is being shown to the</p> <p>19 witness during the deposition.</p> <p>20 MR. FARR: Several of the documents</p> <p>21 that have been used today we have not been given</p> <p>22 copies. Most of them you have.</p> <p>23 MR. BONDURANT: I'm not aware of any</p> <p>24 that we haven't given you copies of, but if</p> <p>25 there are any, we'll be delighted to have copies</p> <p style="text-align: right;">155</p>
<p>1 of your question about my prediction.</p> <p>2 BY MR. FARR:</p> <p>3 Q. Well, let's lay aside the prediction.</p> <p>4 The results in 2012 were that the</p> <p>5 Democrats took 51 percent of the statewide vote</p> <p>6 in congressional elections but elected only 4</p> <p>7 Democrats, and the Republicans took 49 percent</p> <p>8 and elected 9 Republicans.</p> <p>9 A. Again, I don't have those percentages in front</p> <p>10 of me. I know that the results of the election</p> <p>11 were the election of 4 Democrats and 9</p> <p>12 Republicans.</p> <p>13 Q. And you knew that the Democrats took more votes</p> <p>14 in congressional elections than the Republicans?</p> <p>15 A. I don't know.</p> <p>16 MR. FARR: Hasn't he answered that</p> <p>17 before, like two other times?</p> <p>18 THE WITNESS: I don't know that.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. You don't know that?</p> <p>21 A. No.</p> <p>22 MR. FARR: We'd like to take a break</p> <p>23 when it's convenient.</p> <p>24 MR. BONDURANT: This would be a perfect</p> <p>25 time.</p> <p style="text-align: right;">154</p>	<p>1 made. We did make copies of both reports which</p> <p>2 were the only two that we did not previously</p> <p>3 mark as exhibits. We produced multiple copies.</p> <p>4 MR. FARR: Well, we don't have a copy</p> <p>5 of the transcript you were examining him from.</p> <p>6 So I was just -- I'm clarifying and I</p> <p>7 appreciate the fact that we have received copies</p> <p>8 of almost all the exhibits that have been used</p> <p>9 today, but tomorrow I'm asking if there are</p> <p>10 going to be exhibits used to cross-examine</p> <p>11 Senator Rucho that we be given a copy of that</p> <p>12 document.</p> <p>13 MR. BONDURANT: Shall we proceed?</p> <p>14 MR. FARR: Thank you.</p> <p>15 (WHEREUPON, Plaintiffs' Exhibit 17 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. You have been previously been given Deposition</p> <p>19 Exhibit 17 which is the -- from the</p> <p>20 North Carolina General Assembly website.</p> <p>21 Can you identify that as the final</p> <p>22 result of your 2011 redistricting?</p> <p>23 A. It was the plan enacted by the General Assembly.</p> <p>24 Q. And you were the principal architect and</p> <p>25 draftsman of the plan?</p> <p style="text-align: right;">156</p>

<p>1 A. As we've defined it, yes.</p> <p>2 Q. And the election return data you used in</p> <p>3 drafting the districts was the 2008 election</p> <p>4 returns of the presidential election marked here</p> <p>5 in this exhibit?</p> <p>6 A. I did from time to time use other election</p> <p>7 results in drawing districts, but not for the</p> <p>8 congressional plan.</p> <p>9 Q. Not for the congressional plan?</p> <p>10 A. Right.</p> <p>11 Q. You used only the 2008 Obama-McCain general</p> <p>12 election results?</p> <p>13 A. I don't recall for sure. I might have used some</p> <p>14 other results, but by the time the trial rolled</p> <p>15 around we had the 2012 also.</p> <p>16 Q. Do you recall using any results other than the</p> <p>17 Obama-McCain results?</p> <p>18 A. As we were drawing districts during that</p> <p>19 redistricting cycle, we oft-time looked at other</p> <p>20 races too of a plan once it was at sort of a</p> <p>21 bench-like level to look at other politics of</p> <p>22 the plan, but they were not in thematic display</p> <p>23 that was on the map for the VTDs.</p> <p>24 Does that clarify it for you?</p> <p>25 Q. Let me see if I understand you. You used only</p> <p style="text-align: right;">157</p>	<p>1 data on which you drew the plan of the 2008</p> <p>2 presidential election results and no other</p> <p>3 election results?</p> <p>4 A. I'm sorry, I'm trying to -- there are only two</p> <p>5 pages of this?</p> <p>6 Q. Yes.</p> <p>7 A. I don't think there's any -- any election data</p> <p>8 listed on that result, on those two pages.</p> <p>9 Q. If you look under Statewide by District and VTD,</p> <p>10 the third from the bottom line, 2008 Election</p> <p>11 Results, Part 1, 2008 Election Returns, Part 2,</p> <p>12 and then back onto the next block, Individual</p> <p>13 District by VTD, you see the same legend, 2008</p> <p>14 Election Returns, Part 1, 2008 Election Returns,</p> <p>15 Part 2.</p> <p>16 Is it your recollection that that was</p> <p>17 only the Obama election returns and no others?</p> <p>18 A. I don't think that's what the document is about,</p> <p>19 if you want me to explain.</p> <p>20 Q. I'm simply asking you what your recollection</p> <p>21 was.</p> <p>22 A. I'm sorry. Again, my recollection of what?</p> <p>23 Q. Of what elections you used in actually assigning</p> <p>24 VTDs and counties among districts to create a</p> <p>25 Republican advantage in as many districts as</p> <p style="text-align: right;">159</p>
<p>1 the -- you actually used only the results of the</p> <p>2 Obama-McCain 2008 election. You looked at</p> <p>3 results in other statewide elections and saw</p> <p>4 that those results were correlated to them, but</p> <p>5 you did not use those other results.</p> <p>6 Would that be fair?</p> <p>7 A. Partially.</p> <p>8 Q. What part is unfair?</p> <p>9 A. You can only -- you have to choose the thematic</p> <p>10 that you want to put up on the actual system,</p> <p>11 the map that's on the screen of the GIS system,</p> <p>12 Maptitude, while you're drafting, but that</p> <p>13 doesn't preclude you from when the plan reaches</p> <p>14 a certain point of bringing in other election</p> <p>15 results and looking at them to see if the plan</p> <p>16 is reacting specifically to the way you wanted</p> <p>17 it to be drawn, but that is not on the display</p> <p>18 on the computer at the time.</p> <p>19 Does that clarify that for you?</p> <p>20 Q. What was displayed on your computer was only the</p> <p>21 2008 Obama election results?</p> <p>22 A. For the most part, but I can't vouch that at</p> <p>23 some point I may not have put up another</p> <p>24 display.</p> <p>25 Q. And what is listed in Exhibit 17 is the source</p> <p style="text-align: right;">158</p>	<p>1 possible.</p> <p>2 MR. FARR: Objection to the form.</p> <p>3 THE WITNESS: Okay. That's a different</p> <p>4 question than you asked me before, but I will</p> <p>5 say again, to clarify once more, that while I</p> <p>6 was drawing the districts, particularly in a</p> <p>7 county where the county was being split between</p> <p>8 two or more districts, the display on my screen</p> <p>9 as to the coloring of the precincts was a</p> <p>10 political percentage which was almost always the</p> <p>11 McCain-Obama race for president in 2008. We did</p> <p>12 not have, obviously, 2012 then.</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. I don't want to belabor this, but let me show</p> <p>15 you a page from your deposition.</p> <p>16 A. I'll need to see the surrounding pages too,</p> <p>17 so...</p> <p>18 Q. You're perfectly welcome to read as much as you</p> <p>19 would like to read.</p> <p>20 A. Thank you.</p> <p>21 Q. Look at Page 56, beginning at Line 2 and ending</p> <p>22 in Line 4 --</p> <p>23 MR. FARR: I've never done this in a</p> <p>24 video deposition, and I regret that I have to,</p> <p>25 but I'm going to go around behind him.</p> <p style="text-align: right;">160</p>

<p>1 MR. BONDURANT: Go right ahead.</p> <p>2 THE WITNESS: What line are we starting</p> <p>3 on?</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. Line 2 through Line 4. Would you read the</p> <p>6 question out loud and answer.</p> <p>7 A. I'll read the question out.</p> <p>8 "Did you use any election data other</p> <p>9 than the 2008 Obama election in putting</p> <p>10 districts or outside?"</p> <p>11 "I did not."</p> <p>12 Now, I want to go back and read the</p> <p>13 context. May I add something?</p> <p>14 Q. If you think it's necessary to make your answer</p> <p>15 complete.</p> <p>16 A. Yes. I go back to the question on the bottom of</p> <p>17 Page 55, Line 23. Actually, I go back to the</p> <p>18 question before that, 19, Line 19 of Page 55.</p> <p>19 "Okay. Based on your past</p> <p>20 experience and your knowledge, you count</p> <p>21 a vote for Obama as a vote for a black or</p> <p>22 a Democrat?"</p> <p>23 Answer: "A Democrat."</p> <p>24 "Did you use any other election</p> <p>25 results in putting VTDs inside or outside</p> <p style="text-align: right;">161</p>	<p>1 election?</p> <p>2 A. All the districts except District 1.</p> <p>3 Q. 1 or 4?</p> <p>4 A. Okay. I don't actually remember, but my</p> <p>5 recollection would be that probably not. That's</p> <p>6 probably not true.</p> <p>7 We used other election data in</p> <p>8 evaluating the districts as they were being</p> <p>9 drawn, but it was not on the screen. So you</p> <p>10 might draw a plan, a version of the plan and</p> <p>11 look at the other election data also and then</p> <p>12 adjust the plan, but -- go ahead.</p> <p>13 Q. It was all election data, past voting history</p> <p>14 used as a predictor of future performance of</p> <p>15 either the county or the VTD or the census</p> <p>16 block?</p> <p>17 A. No. It would be -- it would be a predictor of</p> <p>18 possible behavior of the VTD.</p> <p>19 Q. Of the VTD?</p> <p>20 A. We don't have political data that is that</p> <p>21 granular for blocks.</p> <p>22 Q. You mentioned earlier that you were -- you</p> <p>23 couldn't remember whether you had paired</p> <p>24 districts. Let me see if I can refresh your</p> <p>25 recollection.</p> <p style="text-align: right;">163</p>
<p>1 of Congressional District 12?"</p> <p>2 Answer: "I'm sorry. Did you say</p> <p>3 political?"</p> <p>4 Question: "Did you use any election</p> <p>5 other than the 2008 Obama election</p> <p>6 putting districts" -- and I think they</p> <p>7 mean VTDs there -- "in or outside and</p> <p>8 also implied is of CD 12?"</p> <p>9 And the answer is: "I did not."</p> <p>10 Q. CD 12 is not mentioned in the last sentence.</p> <p>11 A. CD 12 is mentioned in the context of the</p> <p>12 question that led up to that question. I'm</p> <p>13 sorry, it's --</p> <p>14 Q. Did you use --</p> <p>15 MR. FARR: Can he finish his answer?</p> <p>16 Are you done?</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. Did you use any data --</p> <p>19 MR. FARR: Are you done, Tom?</p> <p>20 THE WITNESS: No, I'm not done.</p> <p>21 In the context of building CD 12, it is</p> <p>22 true that that is the race I used.</p> <p>23 BY MR. BONDURANT:</p> <p>24 Q. How about CD's 11, 10, 9, 8, 7, 5, 6, 3 and 2,</p> <p>25 did you use any data other than the Obama</p> <p style="text-align: right;">162</p>	<p>1 Isn't it true that your 2011 plan</p> <p>2 paired Representative Larry Kissell, who was a</p> <p>3 Democrat, and Mike McIntyre, the Democratic</p> <p>4 incumbent in the 8th district, and drew them</p> <p>5 into the new 8th district which was designed to</p> <p>6 be a strongly Republican district?</p> <p>7 A. Could I see the document you're reading from.</p> <p>8 Q. No. Could you --</p> <p>9 A. Ask your question again. You're trying to</p> <p>10 refresh my memory.</p> <p>11 MR. BONDURANT: Can you read the</p> <p>12 question back.</p> <p>13 (Record Read.)</p> <p>14 THE WITNESS: Once again, I don't</p> <p>15 recall. I'd have to see a map of the plan with</p> <p>16 the incumbent residences on it to answer that</p> <p>17 question accurately.</p> <p>18 MR. FARR: We'll stipulate to whatever</p> <p>19 the facts are.</p> <p>20 MR. BONDURANT: Okay.</p> <p>21 THE WITNESS: So will I.</p> <p>22 BY MR. BONDURANT:</p> <p>23 Q. I just didn't know whether you remembered or</p> <p>24 not.</p> <p>25 ///</p> <p style="text-align: right;">164</p>

<p>1 (WHEREUPON, Plaintiffs' Exhibit 19 was 2 marked for identification.) 3 BY MR. BONDURANT: 4 Q. Dr. Hofeller, can you identify the Exhibit 19 5 which is entitled Proposed 10-3 Map? 6 A. I can identify that's the title of the map, yes. 7 Q. Have you ever seen it before? 8 A. It certainly looks like a map that might have 9 come off my system, yes. 10 Q. Is it your recollection that's a map you 11 designed? 12 A. Once again, I don't remember. Okay. I'm sorry. 13 Q. Do you recall deliberately drafting a map that 14 would create a 10-3 Republican partisan 15 advantage during the 2011 redistricting and 16 submitting it to Representative Lewis and 17 Senator Rucho? 18 A. Well, that's a two-part question. First of all, 19 I don't remember this map; and secondly of all, 20 I don't remember who saw it. So if I drew it, 21 it may have been something that I drew and it 22 wasn't going to work. I drew a lot of 23 alternative maps along the way and we took a lot 24 of different paths in developing these plans to 25 see what would work.</p> <p style="text-align: right;">165</p>	<p>1 A. Yes. 2 Q. Have you seen it before? 3 A. Not that I remember. 4 Q. You didn't have any role in either preparing it 5 or reading it at the time to your recollection? 6 A. No. It's kind of hard to read in black and 7 white. 8 (WHEREUPON, Plaintiffs' Exhibit 22 was 9 marked for identification.) 10 BY MR. BONDURANT: 11 Q. Exhibit 22, can you identify that, sir? 12 A. REDMAP Political Report, Final Report, it says. 13 Q. As consultant for the Republican State 14 Legislative Committee and the Foundation, would 15 you in the ordinary course have received the 16 final report from the REDMAP strategy? 17 A. No, actually I wouldn't. I probably would have 18 compiled all these items myself. 19 Q. So it's your belief that you would have compiled 20 the data that is in 20 and 21 and 22? 21 A. Well, again, I'd have to read them over 22 completely, but as to the changes in the 23 composition of the legislative bodies, I would 24 have known that data, yes. 25 Q. And it's your recollection you actually compiled</p> <p style="text-align: right;">167</p>
<p>1 Q. So you just don't remember that map one way or 2 the other? 3 A. I don't remember it specifically, no. I'm 4 sorry. I can see it's vastly different from the 5 plan that was finalized. 6 (WHEREUPON, Plaintiffs' Exhibit 20 was 7 marked for identification.) 8 BY MR. BONDURANT: 9 Q. Dr. Hofeller, can you identify Exhibit 50? 10 Excuse me. Exhibit 20. I misspoke. 11 MR. FARR: I wish it was 50. 12 MR. BONDURANT: No, you don't. 13 THE WITNESS: Well, the title reads 14 Final REDMAP Report dated 21 December 2010. 15 BY MR. BONDURANT: 16 Q. Did you see a copy of that report? 17 A. I don't remember. 18 Q. At or about the time it was issued? 19 A. I don't remember. I have no recollection of 20 this report. 21 (WHEREUPON, Plaintiffs' Exhibit 21 was 22 marked for identification.) 23 BY MR. BONDURANT: 24 Q. Can you identify 21 as a REDMAP 2012 summary 25 report?</p> <p style="text-align: right;">166</p>	<p>1 the data for the authors of the reports? 2 A. No. I compiled the data -- I think I actually 3 compiled for the RNC rather than for the RSLC. 4 So they may have been given copies of these 5 reports. I just don't remember. 6 Q. And do you remember seeing these reports at the 7 time -- 8 A. No. 9 Q. -- that they were published? 10 A. No. 11 (WHEREUPON, Plaintiffs' Exhibit 23 was 12 marked for identification.) 13 BY MR. BONDURANT: 14 Q. Can you identify Exhibit 23? 15 A. States the 2012 RSLC year-end report. 16 Q. Had you ever seen that report? 17 A. Not that I can remember. 18 Q. Are you familiar with the information in it? 19 A. I don't know. I'd have to read it. 20 Q. Let me specifically call your attention to the 21 second full paragraph in the last sentence, or 22 next to last sentence. 23 "After 2010, Republicans took 24 control of 20 legislative bodies and 25 moved one from Democratic control to</p> <p style="text-align: right;">168</p>

<p>1 being evenly divided."</p> <p>2 Is that your recollection as being</p> <p>3 accurate?</p> <p>4 A. The last sentence of that paragraph?</p> <p>5 Q. That's the next to the last sentence in the</p> <p>6 second full paragraph.</p> <p>7 A. Says "Further, there were 25 states"?</p> <p>8 Q. Let's start again. See the --</p> <p>9 A. Oh, the third sentence from the back.</p> <p>10 Q. The full sentence, the first -- excuse me. The</p> <p>11 second full paragraph begins:</p> <p>12 "Much of the Republican successes in</p> <p>13 the 2012 state legislative races and at</p> <p>14 the congressional level was attributed to</p> <p>15 the RSLC's Redistricting Majority Project</p> <p>16 (REDMAP) - a forward-thinking effort</p> <p>17 undertaken after the 2008 election to</p> <p>18 focus resources in the 2009-2010 cycle on</p> <p>19 states projected to gain seats after the</p> <p>20 national census.</p> <p>21 "After 2010, Republicans took</p> <p>22 control of 20 legislative bodies and</p> <p>23 moved one from Democratic control to</p> <p>24 being evenly divided."</p> <p>25 Is that information consistent with</p> <p style="text-align: right;">169</p>	<p>1 Again, I'd have to go back and</p> <p>2 reevaluate what that specific number was.</p> <p>3 Q. Well, you wouldn't question the accuracy of</p> <p>4 RSLC's REDMAP reports that we've identified?</p> <p>5 A. I don't think I'd really be interested in that</p> <p>6 figure. I had my own figures and that was what</p> <p>7 I was using.</p> <p>8 Q. What were your figures, the results --</p> <p>9 A. Again, I don't remember because I don't have</p> <p>10 those reports in front of me. That's been a</p> <p>11 number of years now and that's not my focus. I</p> <p>12 know it was a good election.</p> <p>13 Q. From a Republican point of view?</p> <p>14 A. I guess you would have to say that, yeah.</p> <p>15 Q. I would expect you would.</p> <p>16 I want to turn now to 2016. You</p> <p>17 testified in the Harris trial in October of</p> <p>18 2015, correct?</p> <p>19 A. I don't remember specifically when the trial</p> <p>20 was, but I testified in it.</p> <p>21 Q. And you previously had testified that the Court</p> <p>22 on February 5, 2016, declared the 1st and the</p> <p>23 12th districts to have been invalidly racially</p> <p>24 gerrymandered and invalidated the plan.</p> <p>25 Do you recall that?</p> <p style="text-align: right;">171</p>
<p>1 your recollection?</p> <p>2 A. Yes.</p> <p>3 Q. And it's accurate?</p> <p>4 A. I can't verify that. I'd have to see the</p> <p>5 reports that I did.</p> <p>6 I know some of the composition of some</p> <p>7 of the legislatures continued to shift during</p> <p>8 the period after the election.</p> <p>9 Q. Then the next sentence continuing:</p> <p>10 "Further, there were 25 states where</p> <p>11 Republicans held majorities in both</p> <p>12 legislative chambers, up from 14. This</p> <p>13 shift in legislative power allowed</p> <p>14 Republicans to control the redistricting</p> <p>15 process and create 20 to 25 new</p> <p>16 Republican congressional districts,</p> <p>17 solidifying a Republican House majority</p> <p>18 and Republican majorities in state houses</p> <p>19 across the country."</p> <p>20 Was that statement accurate to your</p> <p>21 knowledge?</p> <p>22 A. You know, I can't really say that for sure. It</p> <p>23 would depend on what they mean by 20 to 25 new</p> <p>24 Republican congressional districts. That wasn't</p> <p>25 my statement, so I don't know.</p> <p style="text-align: right;">170</p>	<p>1 MR. FARR: Objection to the form.</p> <p>2 THE WITNESS: I really think it's up to</p> <p>3 the attorneys to interpret the Court opinion. I</p> <p>4 know the Court didn't like the districts.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. You recall the Court ruling occurred on</p> <p>7 February 5th?</p> <p>8 A. I think it was Friday, late Friday afternoon</p> <p>9 February 5th, yes.</p> <p>10 Q. And that between the end of the trial until the</p> <p>11 Court ruling, you had no contact with</p> <p>12 Representative Lewis or Senator Rucho or anyone</p> <p>13 in North Carolina pertaining to the districts,</p> <p>14 the congressional districts that were at issue</p> <p>15 in Harris?</p> <p>16 A. I don't know if I didn't have any contact, but</p> <p>17 we certainly weren't considering redraws at that</p> <p>18 point.</p> <p>19 Q. All right. And when did you first begin working</p> <p>20 on redrawing a plan?</p> <p>21 A. After the ruling came out.</p> <p>22 Q. Was that before or after you had any</p> <p>23 communication from Senator Rucho or</p> <p>24 Representative Lewis as to how that plan was to</p> <p>25 be structured?</p> <p style="text-align: right;">172</p>

<p>1 A. I made -- I guess probably over that weekend I 2 made some preliminary looks on what might have 3 been possible to draw. 4 Q. That is, you drew some maps on your computer? 5 A. Yes. You have copies of those maps. 6 Q. When did you first have any communication with 7 Representative Lewis or Senator Rucho as 8 co-chairs of the Joint Select Committee on 9 Congressional Redistricting regarding the 10 criteria which they wanted you to follow in 11 drafting the 2016 plan? 12 A. I don't remember a specific time, but I imagine 13 it was that weekend. It was for sure by Monday 14 because we only had eight days to draw that map 15 so I had to know which way I was to proceed. 16 Q. What were the communications? Can you describe 17 them? What did they tell you they wanted the 18 new map? 19 A. Well, the number one goal was to draw a map that 20 the Court would accept. So we wanted to make 21 sure that the Court's objections were addressed, 22 and the primary way to do that was to put the 23 neutral criteria on top and other criteria 24 underneath it and to not be in a position where 25 anybody could say that race had even come close</p> <p style="text-align: right;">173</p>	<p>1 Another criteria was to look at 2 districts that would be as favorable within 3 those criteria of -- of drawing a plan that was 4 advantageous to Republican candidates. 5 Q. Were there any written communications that set 6 forth any of those criteria? 7 A. No. You have to remember, we had -- by that 8 time we had maybe six days left to go, and those 9 are criteria that I can well keep in my head. 10 Q. Did you make any notes of any of the 11 conversations with Representative Lewis or 12 Senator Rucho in that period between 13 February 5th and February 16th? 14 A. I remember the plan was actually brought into a 15 form to be presented to the legislature long 16 before the 16th. So again, we only had eight 17 days. And the answer to your question directly 18 is, no, I have no notes. 19 Q. Is it correct that you were instructed by the 20 map drawers to create a map that was likely to 21 elect 10 Republicans and 3 Democrats? 22 A. Initially no, but during the process, yes, to a 23 certain degree, within the limits of the other 24 criteria that had to be put on top in order to 25 meet what we thought would be the demands of the</p> <p style="text-align: right;">175</p>
<p>1 to predominating. 2 Q. When you say neutral criteria, what criteria are 3 you referring to? 4 A. Well, let's go through the criteria from one end 5 to the other. 6 Q. No. I want to know which ones you and 7 Senator Rucho and Representative Lewis discussed 8 where the criteria that you call neutral that 9 you were to consider in drafting the plan. 10 A. Well, okay. First of all is one-person, 11 one-vote. Second is the Voting Rights Act, 12 which are the two federal criteria so they 13 always stand on the top of any redistricting. 14 The third criteria was adherence to 15 particularly county lines. And the next 16 criteria was to avoid the breaking of precincts. 17 We're we were also going to look at contiguity 18 which from time to time has been a problem in 19 North Carolina. Looking at compactness. 20 Looking at district cores or communities of 21 interest, and part of that, a sub feature of 22 that is to try and make sure that as few 23 incumbents as possible are not -- are double 24 bunked. That's our slang term for saying 25 drawing in the same district.</p> <p style="text-align: right;">174</p>	<p>1 federal court in the drafting of this plan 2 because the whole goal and the overarching goal 3 of the plan was to make sure that whatever was 4 drawn was a plan according to neutral criteria 5 and that would be acceptable to that Court. 6 Q. Is there any written document that you have seen 7 that refers to a desire to comply with the 8 Voting Rights Act as being a factor in the 9 drawing of the 2016 plan? That's a yes-or-no 10 answer. 11 A. No, but I want to elaborate. 12 Q. A "no" answer requires an elaboration? 13 MR. FARR: If he wants to give one. 14 THE WITNESS: I just want to say that 15 compliance of the Voting Rights Act is not an 16 option; you have to comply. 17 BY MR. BONDURANT: 18 Q. When did you first see a draft of what became 19 the written adopted criteria? 20 A. I don't recall I did. I may have seen it after 21 it was done. I just don't know. 22 (WHEREUPON, Plaintiffs' Exhibit 24 was 23 marked for identification.) 24 BY MR. BONDURANT: 25 Q. Can you identify Exhibit 24 as the 2016</p> <p style="text-align: right;">176</p>

<p>1 Contingent Congressional Plan Committee Adopted</p> <p>2 Criteria?</p> <p>3 A. Yes.</p> <p>4 Q. Did you see a draft of this document before it</p> <p>5 was adopted by the meeting of the joint</p> <p>6 committee on February 16th?</p> <p>7 A. I don't really recall. I was more interested in</p> <p>8 getting the plan into shape to be presented.</p> <p>9 Q. So you were drafting a plan to comply with these</p> <p>10 criteria even before the criteria was drafted --</p> <p>11 was adopted?</p> <p>12 A. Well, I had to have been because the plan was</p> <p>13 for the most part finished by the time the</p> <p>14 criteria were formally adopted by the committee.</p> <p>15 Q. Were there any changes in the plan that you</p> <p>16 drafted made after the criteria were adopted on</p> <p>17 February 16th?</p> <p>18 A. Yes.</p> <p>19 Q. So the plan was in nearly final form before</p> <p>20 criteria was adopted and was changed afterwards?</p> <p>21 A. Yes.</p> <p>22 Q. When you received the written criteria, did you</p> <p>23 regard them as your instructions that you were</p> <p>24 to follow in conforming the plan which you had</p> <p>25 drafted to the criteria adopted by the</p> <p style="text-align: right;">177</p>	<p>1 MR. FARR: Objection to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: I don't think it's a</p> <p>4 background criteria. It's a mandatory criteria.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. It's a mandatory constitutional requirement</p> <p>7 coming from a decision called Wesberry v Sanders</p> <p>8 in 1963, correct?</p> <p>9 A. I'm aware of that case, yes.</p> <p>10 Q. And every congressional reapportionment plan</p> <p>11 which has been drafted since then is expected to</p> <p>12 comply with the one-person, one-vote</p> <p>13 requirement?</p> <p>14 A. Yes, except it's not always clear exactly what</p> <p>15 that compliance is.</p> <p>16 Q. And the second criteria which the joint</p> <p>17 committee instructed you was contiguity, that</p> <p>18 is, congressional districts shall be composed of</p> <p>19 contiguous territory and contiguity by water is</p> <p>20 sufficient, correct?</p> <p>21 A. Contiguous territory, yes. And if memory serves</p> <p>22 me right, I believe that's a requirement which</p> <p>23 the State Supreme Court has laid down because</p> <p>24 when the plans were adopted in earlier decades,</p> <p>25 some of the plans were what we would say</p> <p style="text-align: right;">179</p>
<p>1 committee?</p> <p>2 A. I'm sorry. Did you -- could you repeat that</p> <p>3 again.</p> <p>4 (Record Read.)</p> <p>5 THE WITNESS: I think the answer to</p> <p>6 that question is no, but I can explain if you</p> <p>7 want me to.</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. So you did not regard yourself bound by the</p> <p>10 written criteria?</p> <p>11 A. I would have been bound by the written criteria</p> <p>12 at the time that it came out, but that's not the</p> <p>13 question you asked me.</p> <p>14 Q. When you received the criteria after they were</p> <p>15 adopted on 2016, did you regard yourself bound</p> <p>16 by them?</p> <p>17 A. Of course.</p> <p>18 Q. Did you modify the plan to conform to the</p> <p>19 criteria?</p> <p>20 A. It already conformed to the criteria.</p> <p>21 Q. The first criteria was equal population which is</p> <p>22 a constitutional requirement.</p> <p>23 A. Yes.</p> <p>24 Q. And that's a background requirement of every</p> <p>25 reapportionment plan, correct?</p> <p style="text-align: right;">178</p>	<p>1 contiguous by touch. In fact, some districts</p> <p>2 crossed over other districts, so you'd have</p> <p>3 to -- if you were walking from one district to</p> <p>4 the other, you would have to enter a black hole</p> <p>5 to get to the other districts.</p> <p>6 Q. So in both 2011 and 2016, you applied a</p> <p>7 contiguity standard in drafting the plans?</p> <p>8 A. In accordance with the dictates of the State</p> <p>9 Supreme Court, yes.</p> <p>10 Q. In the third heading called political data, you</p> <p>11 were instructed that the only data other than</p> <p>12 population data to be used to construct the</p> <p>13 congressional district shall be election results</p> <p>14 in statewide contests since January 1, 2008, not</p> <p>15 including the last two presidential contests.</p> <p>16 A. Yes.</p> <p>17 Q. And the -- were you told why you were not to use</p> <p>18 the results of either the last two presidential</p> <p>19 contests in constructing the plan?</p> <p>20 A. If my memory serves me correctly, in the Harris</p> <p>21 trial, the plaintiffs objected to the use of</p> <p>22 those elections. Even though there was, of</p> <p>23 course, a decision that there was no racial</p> <p>24 block voting in the state, they -- they --</p> <p>25 Q. My question was were you told.</p> <p style="text-align: right;">180</p>

<p>1 A. Yes, I was told why. It was because of the 2 decision that came out in the Harris case that 3 had mentioned -- in my belief I was told this -- 4 that the use of that data was a factor in their 5 decision on District 12. 6 Q. So you believe -- 7 A. I would have used it under the normal course of 8 events, but, again, the number one criteria -- 9 the number one overarching criteria in drawing 10 this plan was to draw a plan that was going to 11 be acceptable to the three-judge panel. 12 Q. Let me ask you to look at Exhibit 24. Can you 13 point to any sentence in Exhibit 24 of the 14 adopted criteria that states that the purpose of 15 the plan was to comply with the Harris decision? 16 A. I don't know. I don't think so. 17 Q. Can you point to any written communication that 18 said that a criteria in drafting the 2016 plan 19 was to comply with the Harris decision? 20 A. No, but I have a qualification. 21 MR. FARR: You can explain it. 22 THE WITNESS: Okay. The Court decision 23 in the Harris case ordered the state to draw a 24 new map, draft a new map, in fact, to draft a 25 map within a two-week period. It would have</p> <p style="text-align: right;">181</p>	<p>1 BY MR. BONDURANT: 2 Q. Your understanding of the Harris decision was 3 the Court ruled that you could not use race as a 4 predominant factor in drawing District 1 or 5 District 12? 6 A. That's a different question, isn't it. 7 Q. Can you answer the question I asked, not the one 8 you like. 9 MR. FARR: Objection. Let's not do 10 that. 11 THE WITNESS: Read the question back 12 for me, please. 13 MR. BONDURANT: Just get your witness 14 to be responsive. 15 MR. FARR: He's been responsive all 16 day. 17 (Record Read.) 18 THE WITNESS: Or in any other part of 19 the plan. The answer is, yes, that was my 20 understanding. 21 BY MR. BONDURANT: 22 Q. In the next sentence in the adopted criteria, 23 you were instructed the data identifying race of 24 individuals or voters shall not be used in 25 construction or consideration of districts in</p> <p style="text-align: right;">183</p>
<p>1 been unacceptable to draw -- to go ahead to 2 proceed to draw a plan that you didn't think 3 would comply with the Court's decision. 4 BY MR. BONDURANT: 5 Q. The Court decision did not tell you how to draw 6 a map, did it? It did not tell you what 7 criteria to use. 8 A. It told us that we could not use race as the 9 predominant criteria. 10 Q. Other than not using the racial quota for 11 districts. 12 A. Yes, but we were all aware -- excuse me. We 13 were all aware of what took place during the 14 trial and why especially the 12th district and 15 even the 1st district, to some extent, were 16 ruled to be unconstitutional. 17 Q. And you were not told how to draw the districts? 18 You were only told that you could not use race 19 as the predominant factor in drawing a district, 20 correct? 21 A. No. 22 MR. FARR: Objection to the form. 23 THE WITNESS: I'm sorry. 24 MR. FARR: Because that's a legal 25 issue, but you can answer it.</p> <p style="text-align: right;">182</p>	<p>1 the 2016 plan. 2 Did you follow that instruction? 3 A. Yes. 4 Q. So you did not consider race or the racial 5 composition of any of the districts in drawing 6 the 2016 plan? 7 A. I did not use race as a data factor in drawing 8 the plan. 9 Q. And without having racial data, you could not 10 determine whether or not any of the districts 11 were retrogressive for purposes of Section 2 of 12 the Voting Rights Act, could you? 13 MR. FARR: Objection to that question 14 for a variety of reasons. 15 THE WITNESS: When the plans were drawn 16 and presented before the committee, the 17 Democrats asked for the racial and ethnic data. 18 The racial and ethnic data had shown that the 19 plan was retrogressive. It would have come up 20 with that data and the plan would have had to 21 have been modified. 22 MR. BONDURANT: That was not my 23 question. 24 Would you read my question back and 25 would you give me an answer to my question.</p> <p style="text-align: right;">184</p>

<p>1 (Record Read.)</p> <p>2 THE WITNESS: I would know that --</p> <p>3 generally that District 1 would not have been</p> <p>4 retrogressive because it was drawn in the same</p> <p>5 area.</p> <p>6 BY MR. BONDURANT:</p> <p>7 Q. Did you look at whether any of the other</p> <p>8 districts were compliant with the Voting Rights</p> <p>9 Act?</p> <p>10 A. None of the other areas --</p> <p>11 Q. Was that a "yes" or a "no"?</p> <p>12 A. I'm sorry. Just ask it again.</p> <p>13 MR. BONDURANT: Would you read the</p> <p>14 question back.</p> <p>15 (Record Read.)</p> <p>16 THE WITNESS: No because there were no</p> <p>17 other Voting Rights districts in the state</p> <p>18 before in the previous benchmark plan.</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. The next sentence of your instructions were</p> <p>21 that:</p> <p>22 "Voting districts ('VTDs') should be</p> <p>23 split only when necessary to comply with</p> <p>24 zero deviation population requirements</p> <p>25 set forth in order to ensure integrity of</p> <p style="text-align: right;">185</p>	<p>1 THE WITNESS: No, I don't agree with</p> <p>2 that at all.</p> <p>3 BY MR. BONDURANT:</p> <p>4 Q. Did you generate any maps that split fewer VTDs</p> <p>5 but did not achieve your 10-3 partisan</p> <p>6 objective?</p> <p>7 A. If I understand your question, you said was</p> <p>8 there any other plan drawn that --</p> <p>9 Q. Do you need the question read back?</p> <p>10 A. Okay.</p> <p>11 (Record Read.)</p> <p>12 THE WITNESS: Not necessarily down to</p> <p>13 exact levels of one-person, one-vote.</p> <p>14 The reason precincts were split was to</p> <p>15 adhere to the one-person, one-vote rule.</p> <p>16 There's no way you could draw a map without</p> <p>17 splitting 12 precincts. It's theoretically and</p> <p>18 actually impossible unless you split one</p> <p>19 precinct more than one time.</p> <p>20 BY MR. BONDURANT:</p> <p>21 Q. So you did not draw any maps with fewer precinct</p> <p>22 splits but which did not accomplish your 10-3</p> <p>23 Republican advantage?</p> <p>24 A. I think the answer to that --</p> <p>25 MR. FARR: Objection.</p> <p style="text-align: right;">187</p>
<p>1 political data."</p> <p>2 Do you see that?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. What does it mean when it says that you could</p> <p>5 divide VTDs in order to ensure the integrity of</p> <p>6 political data?</p> <p>7 A. That addresses the fact that whenever you split</p> <p>8 voting districts, the data are allotted on the</p> <p>9 basis of adult population and essentially the</p> <p>10 voting results are distributed homogeneously to</p> <p>11 every block based on their populations, their</p> <p>12 adult populations. So you don't really have a</p> <p>13 way of knowing what the political factors are</p> <p>14 most exactly on either side of that split.</p> <p>15 The political value of the precinct in</p> <p>16 the machine will be pretty much the same on both</p> <p>17 sides of that split, except for rounding errors.</p> <p>18 In fact, political data was not distributed down</p> <p>19 to the block level for all blocks. They had to</p> <p>20 have a certain number of people in them before</p> <p>21 it was disaggregated down to the block level.</p> <p>22 Q. So am I correct that you could split a VTD where</p> <p>23 it was necessary to achieve the partisan</p> <p>24 political objective of a 10-3 Republican map?</p> <p>25 MR. FARR: Objection to the form.</p> <p style="text-align: right;">186</p>	<p>1 THE WITNESS: -- is I did not -- well,</p> <p>2 no, I didn't draw any maps that had fewer than</p> <p>3 13 precinct splits, period.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. Let's go to next paragraph. It's headed</p> <p>6 Partisan Advantage.</p> <p>7 "The partisan makeup of congressional</p> <p>8 delegation under the enacted plan is 10</p> <p>9 Republicans and 3 Democrats."</p> <p>10 That was the 2011 plan which you</p> <p>11 drafted, correct?</p> <p>12 A. First of all, I don't really understand what</p> <p>13 "enacted plan" means in that statement. Does</p> <p>14 that mean -- I think that means the 2011 map,</p> <p>15 the way it's worded.</p> <p>16 Q. That's what I thought it meant too.</p> <p>17 A. I just wanted to make sure we were speaking</p> <p>18 about the same thing.</p> <p>19 Q. The status quo was 10-3?</p> <p>20 A. Yes, it was.</p> <p>21 Q. And that was under the 2011 plan which you</p> <p>22 drafted?</p> <p>23 A. That's true.</p> <p>24 Q. And your instructions were to preserve that</p> <p>25 partisan advantage.</p> <p style="text-align: right;">188</p>

<p>1 A. My instructions were to make an effort to 2 preserve that partisan advantage, yes. 3 Q. And you succeeded in that objective? 4 A. I don't believe that's the case, no. 5 Q. In the 2016 election, how many Republicans were 6 elected? 7 A. Ten. 8 Q. How many Democrats were elected? 9 A. Three. 10 Q. Was that your objective? 11 A. No. My objective was as the criteria stated. 12 That was a -- that was an election where all the 13 incumbents -- I don't know if it was all the 14 incumbents, but most the incumbents won. There 15 was actually one race where two incumbent 16 Republicans ended up being pitted against one 17 another, but that doesn't have anything to do 18 with what I actually think the potential 19 partisan makeup of the plan was. 20 Q. You were instructed to make reasonable efforts 21 to draw a 10-3 Republican advantage plan? 22 A. Yes, I'll agree with that statement. 23 Q. And you achieved that objective? 24 A. No, I don't think I did, actually. I don't 25 think it was achievable under the criteria, the</p> <p style="text-align: right;">189</p>	<p>1 district which the Republicans had inherited 2 from the 2001 or maybe even the earlier 3 redistricting that was -- that stayed strangely 4 configured. 5 A. Yes. What was the question? 6 Q. Did that make it easier for you to draft the 7 2016 plan? 8 A. No. Just made it necessary to draft it 9 differently. 10 Q. When you -- how did you begin drafting the 2016 11 plan? Did you start with the 1st district again 12 as you did in the 2011 plan and build around it? 13 A. No, not really. I was more interested in what 14 we were going to do with the middle of the state 15 where the big changes were going to be, so if 16 the -- if the 12th district was going to have to 17 be dissolved and particularly if the 4th 18 district was to take a different shape. The 19 center part of the state was much more difficult 20 to draw than the two east and west sides of the 21 state. 22 Q. So what district did you draw first? 23 A. I don't remember. I'd have to review my maps, 24 but I was -- I was really looking at both. I 25 may have looked at the 1st first and then turned</p> <p style="text-align: right;">191</p>
<p>1 other criteria which limited the drafting of the 2 plan. 3 Q. So you don't think a 10-3 partisan advantage was 4 achievable under the written criteria you were 5 given by the joint committee? 6 A. I thought it was certainly possible, yes. 7 Q. So it was achievable? 8 A. It was achievable, but it could also not be 9 achievable. Every election is different. The 10 number of candidates, the type of candidates 11 that win, the general political climate, 12 everything goes into who's going to win these 13 elections and -- 14 Q. I thought you told us previously that it is your 15 expert opinion that how a precinct or a voter 16 tabulation district votes, whether Democratic or 17 Republican, was highly predictive of how it 18 would vote in the future and that would be true 19 over a series of elections unless there were 20 major population shifts in the composition of 21 the district. 22 Wasn't that your prior testimony? 23 A. I think for the most part, yes. Yes. 24 Q. Now, one of the instructions was to essentially 25 do away with the 12th district which was a</p> <p style="text-align: right;">190</p>	<p>1 to the rest of the state, but the biggest 2 problem that I knew I had to solve was how to 3 reconfigure around a new configuration in the 4 center of the state with the 4th and the 12th 5 not being the same as they were in the other 6 map. 7 Q. So the 4th and the 12th were predominantly 8 Democratic districts? 9 A. Oh, yes. 10 Q. And you wanted to configure the new districts to 11 be predominantly Democratic districts? 12 A. Yes. Yes. 13 Q. The new 4th, the new 12th and the new or 14 existing 1st were all intended to be 15 predominantly Democratic districts? 16 A. Yes, but much less Democratic. 17 Q. And in making them less Democratic, you took 18 Democrats out of those previous districts and 19 put them in districts that were going to be 20 predominantly Republican districts? 21 A. No, I don't think I would characterize that was 22 the way the plan was drafted at all. 23 Q. Well, how did you make the 1st district less 24 Democratic unless you put people who were 25 formerly Democrats in that district into other</p> <p style="text-align: right;">192</p>

<p>1 districts?</p> <p>2 A. Well, first of all, the predominance of the</p> <p>3 criteria using as many -- of dividing as few</p> <p>4 counties as possible and using whole VTDs was</p> <p>5 going to have that effect. There was no way</p> <p>6 that it was going to happen otherwise.</p> <p>7 Q. It was going to have that effect of moving -- of</p> <p>8 moving Democrats out of the 1st district and</p> <p>9 putting them into districts in which they would</p> <p>10 be outvoted by Republicans, correct?</p> <p>11 A. Again --</p> <p>12 MR. FARR: Objection.</p> <p>13 THE WITNESS: I wouldn't characterize</p> <p>14 it that way at all. If you go to a plan where</p> <p>15 whole counties predominate, the voters are going</p> <p>16 to fall where they fall.</p> <p>17 BY MR. BONDURANT:</p> <p>18 Q. Let's talk about maintaining whole counties.</p> <p>19 Would it have been possible to draft a</p> <p>20 plan that kept more counties whole than the plan</p> <p>21 that you drafted?</p> <p>22 A. Perhaps, yes.</p> <p>23 Q. And if that had been done, would you have been</p> <p>24 able to achieve your 10-3 partisan advantage?</p> <p>25 A. Well, again, I didn't see the plan as the 10-3</p> <p style="text-align: right;">193</p>	<p>1 plan that would maintain the 10-3 Republican</p> <p>2 advantage.</p> <p>3 A. I'm sorry, I forgot the first part of that</p> <p>4 question because I was listening to the second</p> <p>5 part of the question.</p> <p>6 Would you read that back.</p> <p>7 (Record Read.)</p> <p>8 THE WITNESS: My answer is I don't</p> <p>9 know. I didn't make such an attempt, but I</p> <p>10 don't know that the premise of your question is</p> <p>11 correct.</p> <p>12 BY MR. BONDURANT:</p> <p>13 Q. Did you measure with your Maptitude program the</p> <p>14 compactness of the 2016 plan?</p> <p>15 A. I don't remember whether I ran a compactness</p> <p>16 report or not. I honestly don't. You don't get</p> <p>17 compactness results as you're drawing the plan.</p> <p>18 That's not the way the system works.</p> <p>19 Q. Once you have drawn a plan, you can run a</p> <p>20 compactness report on Maptitude, can you not?</p> <p>21 A. That's true.</p> <p>22 Q. And Maptitude, in fact, gives you the ability to</p> <p>23 measure the compactness of the plan by eight</p> <p>24 standards?</p> <p>25 A. Eight tests, yes.</p> <p style="text-align: right;">195</p>
<p>1 plan to begin with, but I don't think it would</p> <p>2 have significantly impacted the politics of the</p> <p>3 plan.</p> <p>4 Q. Did you try to draw a plan that would draft --</p> <p>5 that would divide fewer counties?</p> <p>6 A. Not that I recall, no.</p> <p>7 Q. And how many counties did your 2016 plan divide?</p> <p>8 A. If I remember, it was 13.</p> <p>9 Q. So would it be fair to say that you made no</p> <p>10 effort to draw a plan that would divide fewer</p> <p>11 than 13 counties?</p> <p>12 A. That would be true, yes.</p> <p>13 Q. Could you -- was it necessary to divide 13</p> <p>14 counties in order to achieve your 10-3 partisan</p> <p>15 advantage that you were to make reasonable</p> <p>16 efforts to construct?</p> <p>17 A. As opposed to what?</p> <p>18 Q. Well, you told me that you wanted to avoid</p> <p>19 dividing counties. You made no effort to draft</p> <p>20 a plan to divide fewer counties. And I'm asking</p> <p>21 you whether or not the reason that you didn't</p> <p>22 try to draft a plan that would divide, for</p> <p>23 example, 12 counties was that that was not</p> <p>24 possible and at the same time accomplish your</p> <p>25 other partisan objective which was to create a</p> <p style="text-align: right;">194</p>	<p>1 Q. Did you run any of those tests to measure the</p> <p>2 compactness of the 2016 plan?</p> <p>3 A. Before or after the plan was voted?</p> <p>4 Q. After the plan was adopted and before you</p> <p>5 presented it to Senator Rucho and Representative</p> <p>6 Lewis as your proposed work product following</p> <p>7 their instructions.</p> <p>8 A. Actually the plan was adopted after -- by the</p> <p>9 General Assembly after it was given to them.</p> <p>10 Q. I understand.</p> <p>11 A. Okay. So I have to say the premise of your</p> <p>12 question again is not accurate enough for me to</p> <p>13 make an answer.</p> <p>14 Q. Well, let's go step-by-step.</p> <p>15 Senator Rucho didn't draft a plan.</p> <p>16 A. He didn't draw the lines, that's true.</p> <p>17 Q. Representative Lewis didn't draft the plan.</p> <p>18 A. That's correct.</p> <p>19 Q. You got the written criteria from them.</p> <p>20 A. Yes.</p> <p>21 MR. FARR: Objection.</p> <p>22 BY MR. BONDURANT:</p> <p>23 Q. Correct?</p> <p>24 A. I got criteria from them before I did any</p> <p>25 serious work on the plan. I didn't formulate</p> <p style="text-align: right;">196</p>

<p>1 even the beginnings of what were the final plan</p> <p>2 until I received criteria from them.</p> <p>3 Q. And were those criteria the written criteria</p> <p>4 that are set forth in Exhibit 24?</p> <p>5 A. Yes.</p> <p>6 Q. Were there any other criteria not set forth in</p> <p>7 those two pages?</p> <p>8 A. As I said before, I think the other criteria</p> <p>9 was -- the primary motivation for drawing the</p> <p>10 plan the way it was was to make sure that a plan</p> <p>11 was drawn that would be acceptable to the</p> <p>12 three-judge panel. It had to be reviewed by the</p> <p>13 three-judge panel, and if we didn't feel it was</p> <p>14 going to be acceptable to the three-judge panel,</p> <p>15 it wouldn't have been a worthwhile exercise to</p> <p>16 draw the plan. And it was accepted.</p> <p>17 Q. And you received the written criteria and then</p> <p>18 you prepared a final plan which you then turned</p> <p>19 over to Senator Rucho and Representative Lewis</p> <p>20 so they would have something to introduce?</p> <p>21 A. No, I don't think that timeline is correct.</p> <p>22 Q. All right. When did you complete your final</p> <p>23 plan?</p> <p>24 A. I think, for the most part, a couple days before</p> <p>25 the plan went to the committee. There were some</p> <p style="text-align: right;">197</p>	<p>1 A. I modified the plan because an incumbent address</p> <p>2 was incorrectly located in the incumbency file</p> <p>3 which I received and had resulted in the</p> <p>4 incumbent being outside of the district that was</p> <p>5 intended for him.</p> <p>6 Q. And who is the incumbent?</p> <p>7 A. It was the member in the 6th. I don't remember.</p> <p>8 Q. Was that Mr. Holding?</p> <p>9 A. No. That was the 6th district. Holding was --</p> <p>10 actually, he was drawn in the 4th, I believe,</p> <p>11 and was in the final plan. He lived in Guilford</p> <p>12 County.</p> <p>13 MR. SPEAS: Walker.</p> <p>14 THE WITNESS: Walker. Yes, Walker.</p> <p>15 BY MR. BONDURANT:</p> <p>16 Q. So you drew a Republican incumbent into the new</p> <p>17 4th district pairing him with the Democratic</p> <p>18 incumbent in that district, correct?</p> <p>19 A. That's the way the plan ended up, yes.</p> <p>20 Q. So you did not avoid pairing incumbents in</p> <p>21 drafting the 2016 plan?</p> <p>22 A. The decision was made because --</p> <p>23 Q. Is the answer yes or no?</p> <p>24 A. I'm sorry, I don't know what the yes-or-no</p> <p>25 answer is.</p> <p style="text-align: right;">199</p>
<p>1 last-minute changes, but they weren't of very</p> <p>2 great substance.</p> <p>3 Q. And the criteria, the written criteria,</p> <p>4 Exhibit 21 -- excuse me, Exhibit 24, were in</p> <p>5 your hands before you made that final plan which</p> <p>6 you turned over to Representative Lewis and</p> <p>7 Senator Rucho?</p> <p>8 A. Well, first of all, the first plan I turned over</p> <p>9 to Senator Rucho and Representative Lewis was</p> <p>10 not the final plan; it was the near-final plan.</p> <p>11 And the written criteria, I didn't know the</p> <p>12 written criteria until after the committee met</p> <p>13 and adopted it.</p> <p>14 Q. So you prepared a plan before February 16th, the</p> <p>15 date on which the committee hearing was held and</p> <p>16 which the criteria were formally adopted?</p> <p>17 A. For the most part it was final, yes.</p> <p>18 Q. The written criteria was then adopted and given</p> <p>19 to you?</p> <p>20 A. Yes. I don't really recall how they were given</p> <p>21 to me, but I was aware they had been adopted.</p> <p>22 Q. Did you modify the plan after receiving the</p> <p>23 written criteria as adopted on February 16th?</p> <p>24 A. Yes.</p> <p>25 Q. What modifications did you make?</p> <p style="text-align: right;">198</p>	<p>1 (Record Read.)</p> <p>2 THE WITNESS: That's true.</p> <p>3 BY MR. BONDURANT:</p> <p>4 Q. And Representative Holding in fact decided to</p> <p>5 run in Representative Elder's district --</p> <p>6 Elmer's district and ultimately defeated her in</p> <p>7 the Republican primary?</p> <p>8 A. Well --</p> <p>9 MR. FARR: Yes.</p> <p>10 THE WITNESS: Yes, but it was actually</p> <p>11 more of that district was his district than her</p> <p>12 district.</p> <p>13 BY MR. BONDURANT:</p> <p>14 Q. Okay. So did you make any other modifications</p> <p>15 in the plan that you had drafted before</p> <p>16 February 16th after you received the written</p> <p>17 instructions?</p> <p>18 A. No.</p> <p>19 Q. And you don't know whether you could have</p> <p>20 drafted a plan that would have divided fewer</p> <p>21 counties and at the same time achieve the</p> <p>22 partisan objective of a 10-3 plan?</p> <p>23 A. I did not draw such a plan.</p> <p>24 Q. And you don't know whether such a plan can be</p> <p>25 drawn?</p> <p style="text-align: right;">200</p>

<p>1 A. I would say, with my experience in 2 redistricting, it would be difficult, but it 3 may -- it would have been difficult. 4 Q. Do you know whether a plan could have been 5 drawn -- could divide fewer VTDs than the 13 6 which you divided in the 2016 plan and still 7 achieve the partisan objective? 8 A. I don't think dividing one less precinct would 9 have made one bit of difference one way or the 10 other. 11 Q. So the question is: Do you know or do you not 12 know? 13 A. I know it would not have made a difference. 14 Q. So you could have achieved the 10-3 partisan 15 advantage and divided fewer VTDs than you 16 divided in the plan; is that correct? 17 A. I don't believe that. As you asked it, the 18 theoretical minimum number of VTDs one could 19 divide in a 13-district plan is 12 unless you 20 divide a VTD more than one time, which is 21 essentially another division. I said that 22 before today. 23 Q. And so under the criteria on compactness, the 24 instructions were that counties could be divided 25 under certain circumstances, correct?</p> <p style="text-align: right;">201</p>	<p>1 Q. And you divided counties for political impact? 2 A. The primary reason for dividing counties was to 3 conform to one-person, one-vote, but, yes, the 4 politics was considered when county divisions 5 were made. 6 Q. So if there were a collision between politics 7 and keeping counties whole, politics won? 8 MR. FARR: Objection. 9 THE WITNESS: No, that's not correct. 10 BY MR. BONDURANT: 11 Q. You told us that you divided counties for 12 political impact, correct? 13 A. No, I didn't tell you that. Within counties 14 that were split, politics were considered. 15 That's not -- what you said is not what I said. 16 Q. Well, the instructions were that you could 17 divide counties for political impact. 18 Did you follow those instructions? 19 MR. FARR: I think he's answered the 20 question, but you can go ahead and answer it 21 again. 22 THE WITNESS: I wouldn't characterize 23 what I did that way. 24 When a county was divided and when the 25 plan was presented to the chairman as presented,</p> <p style="text-align: right;">203</p>
<p>1 A. The instructions were to adhere to the 2 one-person, one-vote rule. And once again, it 3 would be impossible to draw a plan that's 4 compliant with one-person, one-vote without 5 dividing counties. 6 Q. You could also under the instructions divide 7 counties by considering incumbency to avoid 8 pairing incumbents. 9 If you turn to the second page of the 10 exhibit, the last sentence under Compactness: 11 "Division of counties shall only be 12 made for reasons of equalizing population, 13 consideration of incumbency and political 14 impact." 15 So there were three exceptions that you 16 could divide counties, correct? 17 A. That's what the -- that's what the criteria 18 state, yes. 19 Q. But because you paired two incumbents, you did 20 not divide counties for incumbency? 21 A. The pairing of the incumbent formerly in the 22 13th was not a result of not dividing a county. 23 Wake County was divided no matter which way that 24 line went. That line went the way it went more 25 for compactness purposes than anything else.</p> <p style="text-align: right;">202</p>	<p>1 it was explained to them and it was explained -- 2 those splits were explained to them and they 3 were okay with the plan as drawn. 4 No way would I have ever brought a plan 5 presentation without their knowing what had 6 happened. 7 BY MR. BONDURANT: 8 Q. Is there anything in the written criteria that 9 says that maintaining county whole would 10 predominate over political objectives? 11 A. I don't know. You'd have to read them. 12 Q. Can you point to anything in there, the 13 documents you have before you and have seen it. 14 A. I could read it all. I don't know whether it 15 was in there or not, but those were part of my 16 instructions because that's part of placing 17 community of interest together. And part of 18 fulfilling the predominate motivation for the 19 plan which was to draw a plan that was 20 acceptable to the Court. And maintaining 21 counties whole is a preeminent neutral criteria 22 across the United States, and it's a criteria 23 which courts have mentioned time after time. 24 Q. Is there anything in this document or in any 25 written communication to you that tells you that</p> <p style="text-align: right;">204</p>

<p>1 keeping counties whole would predominate over 2 the political objective? 3 MR. BERNIER: Objection; asked and 4 answered. Object to form. 5 THE WITNESS: Okay. Under the 6 compactness rule, it says "Division of counties 7 shall only be made for reasons of equalizing 8 population, consideration of incumbency and 9 political impact." 10 There was no other reason given for 11 dividing counties, but it was implicit in the 12 situation that we were dealing with the Court 13 that we keep counties and VTDs whole whenever 14 possible. Again, I believe that was one of the 15 complaints that the Court registered in their 16 decision about the other plan. 17 BY MR. BONDURANT: 18 Q. Is that the only language to which you can 19 point? It says division of counties shall only 20 be made for reasons of equalizing population, 21 consideration of incumbency and political 22 impact? 23 Is there anything in the adopted 24 criteria that even uses the words "communities 25 of interest"?</p> <p style="text-align: right;">205</p>	<p>1 BY MR. BONDURANT: 2 Q. You were not told to pay any attention to 3 municipal boundaries? 4 A. Again -- 5 Q. Is that yes or no? 6 A. Yes, I actually believe that I was told that 7 orally, but that implicitly goes without not 8 dividing counties. 9 The problem you have in North Carolina 10 is that county corporate limit lines are very 11 irregular, and it actually clashes with the rule 12 to keep VTDs whole. So you can't go both ways. 13 You either go one way or the other, and you 14 would divide hundreds of VTDs -- hundreds of 15 cities if you follow just corporate limits. 16 Q. Turn back momentarily to Exhibit 14, which is 17 the Maptitude software description. 18 A. The 1916 version? 19 Q. Look at the fifth page, top right-hand corner. 20 You have it? 21 There's a bullet point: 22 "Identify communities of interest, 23 geographically cohesive areas such as 24 cities, neighborhoods, or racial or 25 ethnic enclaves that tend to have similar</p> <p style="text-align: right;">207</p>
<p>1 A. I don't think that word is in there, no. 2 Q. Is there anything in the written criteria that 3 says that municipalities or trade areas should 4 not be divided? 5 A. I've never heard of a trade area. 6 Q. You never heard of a trade area? 7 A. I mean, I've never heard of it mentioned as any 8 sort of a measurable criteria. 9 Do we have maps to trade areas? 10 Q. Is there anything that mentioned communities of 11 interest in the criteria? 12 A. I don't believe so except -- except indirectly. 13 A county is a community of interest. 14 Q. Your Maptitude program enabled you to identify 15 communities of interest as one of the specific 16 programmable impacts in the plan, isn't it? 17 MR. FARR: Objection. 18 THE WITNESS: No, that's not accurate. 19 The problem with that has always been 20 whose community and whose interest. 21 City -- corporate boundaries are in the 22 system. Counties are in the system. Some other 23 governmental entities are in the system, but I 24 don't believe that Maptitude identifies anything 25 other than those in its levels of geography.</p> <p style="text-align: right;">206</p>	<p>1 interests and vote as a bloc." 2 MR. FARR: What page are you on, Emmet? 3 BY MR. BONDURANT: 4 Q. That's one of the capabilities of Maptitude, 5 isn't it? 6 MR. FARR: Where are you? 7 MR. BONDURANT: Page 5. 8 THE WITNESS: Well, we could get into a 9 half-hour discussion here about what Maptitude 10 means by communities of interest, but there 11 are -- there is nothing in Maptitude's 12 demographic database that I know of, 13 particularly in the version of Maptitude that 14 I've been using, that identifies anything else 15 than corporate limits and what they call census 16 designated places, except for other things like 17 Indian reservations and such, but community of 18 interest has a multitudinous meaning depending 19 on who wants to apply what community of 20 interest. 21 BY MR. BONDURANT: 22 Q. In short, you were not instructed to consider 23 communities of interest in the adopted criteria 24 and you did not do so? 25 MR. FARR: Objection. He's been asked</p> <p style="text-align: right;">208</p>

<p>1 five times.</p> <p>2 THE WITNESS: I define a county as a</p> <p>3 community of interest, it's a recognized</p> <p>4 community of interest, and as such I was</p> <p>5 certainly directed to adhere to that.</p> <p>6 BY MR. BONDURANT:</p> <p>7 Q. Dr. Hofeller, in constructing your plan, did</p> <p>8 you -- let me withdraw that. If I can find --</p> <p>9 excuse me.</p> <p>10 A. Can I have a break, please.</p> <p>11 MR. BONDURANT: Certainly.</p> <p>12 THE VIDEOGRAPHER: Off record at</p> <p>13 4:54 p.m.</p> <p>14 (Brief Recess.)</p> <p>15 THE VIDEOGRAPHER: On record at</p> <p>16 5:09 p.m.</p> <p>17 (WHEREUPON, Plaintiffs' Exhibit 25 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. BONDURANT:</p> <p>20 Q. Can you identify Exhibit 25 as the 2016</p> <p>21 Congressional Contingent Plan Corrected that you</p> <p>22 drafted?</p> <p>23 A. Yes.</p> <p>24 (WHEREUPON, Plaintiffs' Exhibit 26 was</p> <p>25 marked for identification.)</p> <p style="text-align: right;">209</p>	<p>1 BY MR. BONDURANT:</p> <p>2 Q. Can you identify Exhibit 27, please.</p> <p>3 A. It -- it's a special report that was made up of</p> <p>4 the plan. I believe this was the report that</p> <p>5 was presented to the committee at the beginning</p> <p>6 of their hearing.</p> <p>7 Q. And it reflects what data?</p> <p>8 A. Total population data and political data. Let</p> <p>9 me see if it has registration on it. I don't</p> <p>10 believe it does.</p> <p>11 So it has a number of political races.</p> <p>12 I remember listening at the hearing and people</p> <p>13 had difficulty in identifying what the headers</p> <p>14 were all about.</p> <p>15 Q. Exhibit 27 is the data on which you relied in</p> <p>16 drafting the 2016 plan?</p> <p>17 A. In part, yes.</p> <p>18 Q. Population data and the results of statewide</p> <p>19 elections from 2008 through 2014, excluding the</p> <p>20 presidential elections in 2008 and 2012,</p> <p>21 correct?</p> <p>22 A. Yes, but I don't think there's any 2014 data in</p> <p>23 this report because I didn't see it at first.</p> <p>24 (WHEREUPON, Plaintiffs' Exhibit 28 was</p> <p>25 marked for identification.)</p> <p style="text-align: right;">211</p>
<p>1 BY MR. BONDURANT:</p> <p>2 Q. Can you identify Exhibit 26 as the General</p> <p>3 Assembly's website showing the data on which you</p> <p>4 relied in drafting the 2016 plan?</p> <p>5 MR. FARR: Objection.</p> <p>6 THE WITNESS: I'm sorry, there's no</p> <p>7 data on this sheet.</p> <p>8 BY MR. BONDURANT:</p> <p>9 Q. You get the data by going to the computer and</p> <p>10 asking for the PDF of the 2004 election runs,</p> <p>11 2008 election returns and so on, correct?</p> <p>12 A. Actually, the state has more data than is listed</p> <p>13 on here.</p> <p>14 Q. Well, I understand.</p> <p>15 A. Okay. So it's part of the data that the state</p> <p>16 has, and it's -- implicit by that it's part of</p> <p>17 the data that I would have had available to me</p> <p>18 if I had wanted to draw it down.</p> <p>19 But most of the data is actually census</p> <p>20 data. We had the '04 returns, the '08 returns</p> <p>21 and the '10 returns, but we also had some --</p> <p>22 when this plan was drawn, we had '12 returns and</p> <p>23 '14 returns.</p> <p>24 (WHEREUPON, Plaintiffs' Exhibit 27 was</p> <p>25 marked for identification.)</p> <p style="text-align: right;">210</p>	<p>1 BY MR. BONDURANT:</p> <p>2 Q. Can you identify Exhibit 28.</p> <p>3 A. Those are statewide totals for various</p> <p>4 elections.</p> <p>5 Q. And are those --</p> <p>6 A. And it also would give you a key to</p> <p>7 understanding what the column headers were on</p> <p>8 Exhibit 27.</p> <p>9 Q. You read Exhibits 27 and 28 together, correct?</p> <p>10 A. Yes, unless you knew what the -- knew what they</p> <p>11 stood for.</p> <p>12 Q. And Exhibit 28 are the results of the 2008</p> <p>13 through 2014 elections on which you relied in</p> <p>14 drafting the 2016 plan?</p> <p>15 A. They include the elections that I used.</p> <p>16 Q. Help me understand how you used these election</p> <p>17 results. Did you weight the results in some</p> <p>18 elections more heavily in others?</p> <p>19 A. No.</p> <p>20 Q. Did you take an average?</p> <p>21 A. Yes.</p> <p>22 Q. So you averaged all of these together and just</p> <p>23 used a single numerical average in identifying</p> <p>24 which VTDs were likely to vote Democratic and</p> <p>25 which VTDs were likely to vote Republican?</p> <p style="text-align: right;">212</p>

<p>1 MR. FARR: Objection.</p> <p>2 THE WITNESS: As you stated the</p> <p>3 question, the answer is no.</p> <p>4 BY MR. BONDURANT:</p> <p>5 Q. How did you use these results?</p> <p>6 A. I used only part of these results. There would</p> <p>7 be no need to use all of these contests in order</p> <p>8 to get a pretty good cross section of what the</p> <p>9 past vote had been.</p> <p>10 Q. Which contest did you use?</p> <p>11 A. I can't tell you off the top of my head. I</p> <p>12 would be glad to provide that if you want it.</p> <p>13 Q. I would like for you to do so. How long will it</p> <p>14 take you to do that?</p> <p>15 A. Well, I don't have it with me, so I'd at least</p> <p>16 have to get back and give it to my attorneys and</p> <p>17 they can give it to you.</p> <p>18 Q. So if I understand your answer correctly, you</p> <p>19 did not average all 20 races. You selected some</p> <p>20 of the 20 and averaged them and used that number</p> <p>21 in -- as the political data which you used in</p> <p>22 assigning VTDs and counties to various</p> <p>23 congressional districts.</p> <p>24 A. Where the county was split, that would be</p> <p>25 correct.</p> <p style="text-align: right;">213</p>	<p>1 Democratic or Republican county.</p> <p>2 Q. When you say thematics, you're speaking of the</p> <p>3 color codings?</p> <p>4 A. Yes.</p> <p>5 Q. And the color codings told you whether or not a</p> <p>6 county was more likely to vote Democratic than</p> <p>7 Republican?</p> <p>8 MR. FARR: Objection.</p> <p>9 THE WITNESS: Again, I didn't have the</p> <p>10 totals, but, also, I've drawn a lot of</p> <p>11 legislative districts in these areas and I</p> <p>12 remember what the legislative districts look</p> <p>13 like too.</p> <p>14 BY MR. BONDURANT:</p> <p>15 Q. And in each instance you were relying primarily</p> <p>16 on the voting history of people in that county</p> <p>17 as you were in the VTDs in deciding whether you</p> <p>18 would include that county in trying to create a</p> <p>19 predominantly Democratic district or</p> <p>20 predominantly Republican district?</p> <p>21 A. Well, remember, the initial criteria was try to</p> <p>22 split as few counties as possible, but if you're</p> <p>23 building a plan, as you're building a plan,</p> <p>24 there's a running total -- a running tally</p> <p>25 that's on the machine.</p> <p style="text-align: right;">215</p>
<p>1 Q. And where you were assigning a whole county, you</p> <p>2 looked at the voting history in that particular</p> <p>3 county?</p> <p>4 A. Not really, no.</p> <p>5 Q. What data -- political data did you look at for</p> <p>6 a county that was not being split?</p> <p>7 A. I didn't really look at any data for the</p> <p>8 counties, except the populations, of course.</p> <p>9 Q. How did you know whether the county would be</p> <p>10 likely to be -- if included in a district would</p> <p>11 result in a Republican district versus a</p> <p>12 Democratic district?</p> <p>13 A. I guess -- I guess I'd have to correct my answer</p> <p>14 in saying that for the whole counties I did see</p> <p>15 the shading so I had a general idea, but I</p> <p>16 didn't actually use the thematic display to</p> <p>17 divide the counties.</p> <p>18 I may not divide the counties. Where</p> <p>19 the counties were divided, I used the VTD</p> <p>20 schematic. Where the counties weren't divided,</p> <p>21 a lot of it was because the counties -- there</p> <p>22 were the same counties that were in the previous</p> <p>23 districts and because a general look at the --</p> <p>24 at the thematics of the county would give me a</p> <p>25 rough idea of whether or not it was a strong</p> <p style="text-align: right;">214</p>	<p>1 Q. A running tally not only of the population but</p> <p>2 of the voting history?</p> <p>3 A. Whatever you select to display you can put up</p> <p>4 there. You have a choice. You can pick certain</p> <p>5 fields to be summary fields.</p> <p>6 Q. And voting history was one of those fields?</p> <p>7 A. Well, it would be multiple fields, yes.</p> <p>8 Q. Did you run any of the compactness measures of</p> <p>9 the 2016 plan on Map Quest -- excuse me --</p> <p>10 Maptitude?</p> <p>11 MR. FARR: And you're talking about</p> <p>12 before the plan was enacted?</p> <p>13 MR. BONDURANT: Before or after.</p> <p>14 MR. FARR: Afterwards, I instruct you</p> <p>15 not to answer that question.</p> <p>16 MR. BONDURANT: On what ground?</p> <p>17 MR. FARR: Work product.</p> <p>18 BY MR. BONDURANT:</p> <p>19 Q. Before the plan was enacted, did you run any of</p> <p>20 the tests of compactness?</p> <p>21 A. No.</p> <p>22 Q. And was that also true of the 2011 plan?</p> <p>23 A. I don't remember.</p> <p>24 MR. FARR: Emmet, I also think it's</p> <p>25 Rule 26 -- it's a rule on experts.</p> <p style="text-align: right;">216</p>

<p>1 BY MR. BONDURANT:</p> <p>2 Q. Do you expect to testify as an expert in this</p> <p>3 case?</p> <p>4 MR. FARR: He doesn't know yet.</p> <p>5 BY MR. BONDURANT:</p> <p>6 Q. Do you know what subjects you are expected to</p> <p>7 testify concerning?</p> <p>8 A. I don't know. Depends on what they want me to</p> <p>9 testify on.</p> <p>10 Q. So once you -- that decision is made and I</p> <p>11 presume you'll issue an expert report and tell</p> <p>12 us?</p> <p>13 A. If so directed, yes. That's the usual</p> <p>14 procedure.</p> <p>15 Q. Have you ever made a calculation of what</p> <p>16 percentage of the statewide vote in</p> <p>17 North Carolina the Democrats would have to win</p> <p>18 in order to win a majority of the congressional</p> <p>19 delegation under the 2011 or the 2016 plans?</p> <p>20 A. I don't think that one necessarily follows the</p> <p>21 other. Every election is different.</p> <p>22 Q. My question is: Have you ever attempted to</p> <p>23 calculate or predict what percentage of the</p> <p>24 statewide vote Democrats would have to win in</p> <p>25 order to win a majority of North Carolina's 13</p> <p style="text-align: right;">217</p>	<p>1 to which it is conclusive as to the fairness of</p> <p>2 an election.</p> <p>3 BY MR. BONDURANT:</p> <p>4 Q. I was not suggesting whether it's conclusive or</p> <p>5 not. It's a measure based on the idea if the</p> <p>6 vote share of the major parties in a state were</p> <p>7 reversed that their shares of the congressional</p> <p>8 delegation should also come close to matching</p> <p>9 the vote share. Is that your --</p> <p>10 A. Okay. I think, as I understand your question,</p> <p>11 the answer is it's a general academic</p> <p>12 conclusion, but there are a lot more factors</p> <p>13 that go into who's going to win or not win an</p> <p>14 election other than the statewide percentages,</p> <p>15 particularly if you look at the percentages</p> <p>16 within individual congressional districts.</p> <p>17 Q. Is the concept of partisan symmetry as a measure</p> <p>18 of partisan fairness or unfairness one that is</p> <p>19 well accepted in the academic community?</p> <p>20 MR. FARR: Objection.</p> <p>21 You can answer if you can.</p> <p>22 THE WITNESS: I haven't read all the</p> <p>23 articles on that so I'm not sure of what the</p> <p>24 level of acceptance is.</p> <p>25 I know that it's a concept that's been</p> <p style="text-align: right;">219</p>
<p>1 congressional seats under the 2016 plan which</p> <p>2 you drafted?</p> <p>3 A. Under the 2016 plan, no.</p> <p>4 Q. If Democrats had won the same share of the</p> <p>5 statewide vote in the 2016 election as the</p> <p>6 Republicans won, which was 53 percent of the</p> <p>7 vote, how many additional seats would the</p> <p>8 Democrats have won in North Carolina?</p> <p>9 A. It depends where they won the votes.</p> <p>10 Q. Have you attempted to make any calculation?</p> <p>11 A. I'm sorry. What? Calculation of?</p> <p>12 Q. Of how many seats the Democrats would have won</p> <p>13 if they received the same share of the statewide</p> <p>14 vote in North Carolina as the Republicans</p> <p>15 received in congressional elections.</p> <p>16 A. No.</p> <p>17 Q. Are you familiar with the word partisan</p> <p>18 symmetry?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand the term partisan symmetry to</p> <p>21 mean that it's a measure of the fairness of an</p> <p>22 apportionment?</p> <p>23 MR. FARR: Objection.</p> <p>24 THE WITNESS: I understand what</p> <p>25 partisan symmetry is. I don't know the extent</p> <p style="text-align: right;">218</p>	<p>1 around for decades, actually. I was familiar</p> <p>2 with it in the '70s. And certainly in terms of</p> <p>3 an academic goal, it would be nice if we could</p> <p>4 say that if you won a majority of the votes cast</p> <p>5 for the offices in that state, it would be nice</p> <p>6 if you won a majority of the seats, but then</p> <p>7 you'd have proportional representation, and this</p> <p>8 country isn't run on proportional</p> <p>9 representation. It's won by geography</p> <p>10 districts.</p> <p>11 So there again, there are a lot of</p> <p>12 facts that go into that analysis. So it isn't</p> <p>13 true just standing by itself.</p> <p>14 BY MR. BONDURANT:</p> <p>15 Q. Have you made any attempt to evaluate the</p> <p>16 partisan symmetry of the 2016 Congressional</p> <p>17 Redistricting Plan in North Carolina?</p> <p>18 A. No. It would be almost impossible to do with</p> <p>19 one election.</p> <p>20 (WHEREUPON, Plaintiffs' Exhibit 29 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. BONDURANT:</p> <p>23 Q. Dr. Hofeller, can you identify Exhibit 29 as the</p> <p>24 official election results in the 2016 general</p> <p>25 election in North Carolina, including not only</p> <p style="text-align: right;">220</p>

<p>1 the presidential vote but the vote for the 2 Senate and the U.S. House of Representatives? 3 MR. FARR: What did you describe this 4 as, Emmet? 5 MR. BONDURANT: The official general 6 election results in 2016. 7 MR. FARR: Okay. 8 THE WITNESS: Actually, it includes the 9 U.S. Senate vote too, yes. 10 BY MR. BONDURANT: 11 Q. So it's President, Senate, House of 12 Representatives? 13 A. The federal offices. 14 Q. Yes. And it reflects, does it not, that you 15 achieved your 10-3 partisan objective of 10 16 Republicans being elected and 3 Democrats? 17 MR. FARR: Objection to the form. 18 THE WITNESS: Again, I don't agree with 19 the premise of your question. If you want to 20 ask it a different way, I might give you an 21 answer you want. 22 BY MR. BONDURANT: 23 Q. Democrats were elected in the 1st, 4th and 12th 24 districts, were they not? 25 A. Yes.</p> <p style="text-align: right;">221</p>	<p>1 MR. BONDURANT: Four in 2012. 2 MR. FARR: It was 10-3 in 2014 and 9-4 3 in 2012. 4 MR. BONDURANT: Yeah. 5 I think I have no other questions. 6 THE WITNESS: Amazing. 7 (Discussion held off the record.) 8 EXAMINATION 9 BY MS. EARLS: 10 Q. Good afternoon, Dr. Hofeller. I'm Anita Earls. 11 A. Yes. We've met a few times. 12 Q. Yes. Thank you. I appreciate your sticking in 13 with us, and I do have to ask you a few 14 questions, but I'll try to be fairly brief. 15 First, I want to make sure that you 16 received our subpoena. I think we're at 30. 17 THE REPORTER: We're at 30. 18 (WHEREUPON, Plaintiffs' Exhibit 30 was 19 marked for identification.) 20 BY MS. EARLS: 21 Q. If you would take a look at what's been marked 22 as Exhibit 30, do you recognize that? 23 A. Yes, I believe. I don't know if I saw it all, 24 but I saw what I needed to see. 25 Q. Did you see the list of documents to be produced</p> <p style="text-align: right;">223</p>
<p>1 Q. By large majorities? 2 MR. FARR: Objection to the form. 3 THE WITNESS: Well, the sheet actually 4 shows the 68 percent in the 1st and a 68 percent 5 in the 4th and a 64 percent vote in the -- 6 MR. FARR: You're looking at the wrong 7 thing. 8 THE WITNESS: I'm sorry. A 67 percent 9 vote in the 12th. 10 BY MR. BONDURANT: 11 Q. And those were larger percentages than any 12 Republican was elected in any of the ten other 13 districts? 14 A. I don't know. I'd have to look at all of them. 15 Actually, it's not true as you stated 16 it. Walter Jones got 67.2 percent of the vote 17 in his district and Alma Adams got 67.02. 18 Q. Thank you for that correction. 19 So the result was 10 Republicans were 20 elected and 3 Democrats were elected in 2016? 21 A. Yes. 22 Q. And that was the same partisan breakdown that 23 had occurred in 2014? 24 A. I think you elected 4 Democrats in 2014. 25 MR. FARR: We'll stipulate to that.</p> <p style="text-align: right;">222</p>	<p>1 on the last page of this exhibit? 2 A. Yes. 3 Q. And feel free to take a moment to review that. 4 My question is whether sitting here now there 5 are any documents that you're aware of that fall 6 into any of these categories that haven't -- 7 that we have not already received. 8 A. In all this, I think -- I think I've been 9 responsive as I can. I don't know what some of 10 these statistical systems are in 6. 11 Q. So you're talking about the references to the 12 statistical analysis software, the Stata and R, 13 SPSS? 14 A. I know SPSS and I know SASS. I don't know Stata 15 and R. Maybe it's my vintage. 16 Q. I assume, then, you don't have documents that 17 were -- that are code created in that software. 18 A. There wasn't any new -- no, there was no code 19 and no reports. 20 Q. And in particular, I'm interested in the 21 testimony you gave earlier about the average 22 that you compiled of election returns in 23 analyzing the 2016 districts. 24 Was that -- I don't recall us seeing 25 any data file that contained that average. Is</p> <p style="text-align: right;">224</p>

<p>1 that something that you've produced already or</p> <p>2 you can produce?</p> <p>3 A. It's not really in any data file. It's -- you</p> <p>4 type a formula in to Maptitude at the time you</p> <p>5 are shading the precincts and you put in the</p> <p>6 formula and it produces it, but it doesn't</p> <p>7 actually go into any database. I think it's</p> <p>8 more done on the fly. Maybe Maptitude puts it</p> <p>9 in an intermediate file, but I know not. It's</p> <p>10 like a black box to me.</p> <p>11 Q. Did you print out any hard reports once</p> <p>12 Maptitude was running that formula?</p> <p>13 A. The only hard copy I would have would be to</p> <p>14 print a map which displayed the thematics, which</p> <p>15 I really didn't do, or of the map itself.</p> <p>16 Q. But you can provide us the formulas so that we</p> <p>17 can determine which -- which data you were --</p> <p>18 A. Sure.</p> <p>19 Q. -- averaging?</p> <p>20 A. And I'd be happy to do that.</p> <p>21 Q. Okay. Other than that, is there anything else</p> <p>22 that you have that relates to any of these</p> <p>23 categories?</p> <p>24 A. There's nothing in here that -- if you all have</p> <p>25 a Maptitude system, you know what files are in</p> <p style="text-align: right;">225</p>	<p>1 districts.</p> <p>2 Q. And you submitted an expert report in that case?</p> <p>3 A. I did.</p> <p>4 Q. Could you provide us a copy of that report?</p> <p>5 A. Sure.</p> <p>6 Q. Thank you.</p> <p>7 A. Absolutely.</p> <p>8 Q. Now, you also testified that you haven't been</p> <p>9 asked to do a report in this case, and I</p> <p>10 understand the exchange that happened earlier.</p> <p>11 I just want to be clear that counsel</p> <p>12 understands if you are identified as an expert,</p> <p>13 then we would have another chance to depose him</p> <p>14 as an expert witness.</p> <p>15 MR. FARR: Sure. Absolutely.</p> <p>16 BY MS. EARLS:</p> <p>17 Q. So all of your testimony today, then, has been</p> <p>18 based on your experience in drawing</p> <p>19 congressional redistricting maps for</p> <p>20 North Carolina, not any analysis you've done</p> <p>21 subsequent to the enactment of the 2016 map?</p> <p>22 A. I just amend that to say it's also my experience</p> <p>23 in drawing congressional districts and</p> <p>24 legislative districts across the nation.</p> <p>25 Q. Okay. Let me -- I just have a couple of</p> <p style="text-align: right;">227</p>
<p>1 there because it would be in the same computer.</p> <p>2 They would be the same in your computer as they</p> <p>3 are in our computer or they would be readily</p> <p>4 available from the state.</p> <p>5 Q. Okay. You testified this morning that you are</p> <p>6 currently retained -- the one thing that you're</p> <p>7 engaged in that's not on your c.v. is a case in</p> <p>8 Virginia where you are retained.</p> <p>9 A. Yes.</p> <p>10 Q. And can you tell me the name of that case again.</p> <p>11 Besilind?</p> <p>12 A. B-E-S-I-L-I-N-D versus State Board of Elections.</p> <p>13 Q. And what type of case is that?</p> <p>14 A. It's -- I believe -- again, the lawyers could</p> <p>15 speak for it better than I could, but it's</p> <p>16 about -- basically about compactness and the</p> <p>17 plaintiff's witness had drawn some alternative</p> <p>18 maps for his report, and I commented on that.</p> <p>19 There was also a slight reference to contiguity</p> <p>20 which I commented on, but it was mainly on</p> <p>21 compactness.</p> <p>22 They were suing, I believe, again, on</p> <p>23 the fact that a number of districts were not in</p> <p>24 conformance with the Virginia State</p> <p>25 Constitution's requirement for compactness</p> <p style="text-align: right;">226</p>	<p>1 questions about the criteria, and it might help</p> <p>2 to try to do this chronologically.</p> <p>3 I understand that you received notice</p> <p>4 of the Court opinion in 2016 on February 5th,</p> <p>5 the Friday night it was issued; is that right?</p> <p>6 A. I don't know whether I actually got the decision</p> <p>7 sent to me that night or the next day. I just</p> <p>8 don't remember.</p> <p>9 Q. And then who did you first have contact with</p> <p>10 about drawing a map in response to the Court's</p> <p>11 order?</p> <p>12 A. Attorneys. Attorneys.</p> <p>13 Q. And then -- and do you recall when -- when you</p> <p>14 spoke with attorneys?</p> <p>15 A. Not exactly, but I'm sure it was probably the</p> <p>16 next day. I just don't remember. I was more</p> <p>17 concerned about how we were going to meet the</p> <p>18 deadline.</p> <p>19 Q. So then who first gave you instructions</p> <p>20 regarding the criteria you should follow in --</p> <p>21 in constructing a remedial plan?</p> <p>22 A. The chairman.</p> <p>23 Q. And who -- was that both of them together? Was</p> <p>24 this a conference call? How did that happen?</p> <p>25 A. I don't actually remember. I remember that I</p> <p style="text-align: right;">228</p>

<p>1 spoke to them I think it was -- we either had a 2 meeting or I spoke to them on the phone, but 3 there was no way I could proceed with a plan in 4 any reasonable fashion without knowing what 5 their wishes were regarding how the map should 6 be drawn. Back to the architect analysis: You 7 have to know what kind of a house they want. 8 Q. And I'm trying to be clear on who was telling 9 you what the criteria should be and when you 10 first learned that. 11 So you think that it could have been a 12 phone call, it could have been in person, but it 13 was early -- was it the Monday after the Court 14 decision? 15 A. It had to have been Monday. I mean, we had 16 eight days to draw this plan, the full map, and 17 usually this is a process which spreads out over 18 months rather than days. Everybody thinks we 19 had like two weeks, but we didn't really have 20 two weeks to draw the plan because it had to go 21 through the legislative process. 22 Q. Was anyone else working on these congressional 23 districts with you? 24 A. There were a number of people who came to look 25 at the plans, yes.</p> <p style="text-align: right;">229</p>	<p>1 pass it through the legislature, that you have 2 to start and also you have to draw a plan which 3 is going to be acceptable to the Court, that you 4 think the Court will not find fault with because 5 that's what the Court ordered you to do is to 6 draw the map, a new map. So I had to be 7 thinking about that. 8 Q. Let me just show you -- I'm going to mark this 9 collection of maps as a single exhibit. 10 (WHEREUPON, Plaintiffs' Exhibit 31 was 11 marked for identification.) 12 BY MS. EARLS: 13 Q. So Exhibit 31 is a collection of 22 maps, and 14 they all have a Bate stamp at the bottom so we 15 can identify the page numbers. 16 Are these the maps you identified as 17 the ones you provided to us? 18 A. I provided you block assignment files for all of 19 these maps, which is the normal way that you 20 transmit plans. 21 Q. So let me just ask you, page DEF 000042, the 22 first page of Deposition Exhibit 31, are you 23 saying you didn't actually print out this map, 24 you just provided a block assignment file for 25 it?</p> <p style="text-align: right;">231</p>
<p>1 Q. Who else came to look at the plans? 2 A. Jim Blaine came to look. Brent Woodcox came to 3 look. Both of the chairmen came to look. The 4 speaker's attorney, Woodson, and the speaker 5 actually came to look at the plan at one point. 6 Q. So before they came to look at it, you had to do 7 some drawing? 8 A. Well, yes. They're not going to come to look at 9 nothing. 10 Q. So who did you talk to -- do you recall whether 11 you talked to Senator Rucho or Representative 12 Lewis or both of them together before you 13 started drawing the plans? 14 A. There was a stage, again, which you can see on 15 the maps that I presented to you where I just 16 had to look and see what was possible. I 17 consider that more a -- an advisory role to say 18 this is generally what you can do or what I 19 think you should be doing, but you have to 20 instruct me on what you think is preeminent. 21 And, of course, it goes without saying 22 that when the Court gives you an order that you 23 have to draw a new map and present it in -- what 24 was it, two weeks? Was it 14 days or was it 25 16 days? I don't remember -- and you have to</p> <p style="text-align: right;">230</p>	<p>1 A. Well, of course I printed it out or you wouldn't 2 have these maps. These maps came -- I printed 3 out for you to have, being responsive to your 4 subpoena. 5 Q. Thank you. That's what I was trying to 6 understand. 7 A. I think you have them probably in reverse 8 chronological order, but that's okay. 9 Q. I put them in the order they were numbered so I 10 apologize. So what you're saying is that the 11 000064 came before the 000042? 12 A. I'm just going to look through it briefly here 13 for you. It's a lot of maps. 14 I think they're in reverse 15 chronological order. I'm not absolutely -- 16 somebody may have mixed it up. 17 Q. Let me just start at the back, then, and ask you 18 about the page 64 in Deposition Exhibit 31. And 19 at the bottom there's a little label "Congress 20 16-A." 21 A. Yes. That doesn't imply it was the 16th map. 22 Q. Does it have any significance, the 16-A? 23 A. You know, it had significance in my mind. I 24 think I used 16 because it was 2016. I wouldn't 25 take anything from most of these names.</p> <p style="text-align: right;">232</p>

<p>1 Q. Do you know if this was a map you had drawn 2 before you talked to the redistricting chairman? 3 A. I'm not sure. It might have been, yes. 4 Q. And is that same true of "Congress 16-B"? 5 A. I think, yes, probably. 6 Q. And then what about Page 62, which is "Congress 7 Southern Transit," is that another example you 8 were looking at before you talked to the 9 chairman? 10 A. Yes. 11 Q. And what about Page 61, "Congress 16-C," did you 12 look -- is that a map you prepared before you 13 spoke with the chairman? 14 A. At this point I don't rightly remember. I'm 15 sorry. 16 Q. I don't know -- I don't know that there's a lot 17 of difference between them, but what about 18 "Congress 16-D"? 19 A. They're all either variations or a little more 20 refinement of an area that I wanted to take off 21 in to try to point myself with what could be 22 done. So as I think in line with doing my duty 23 as a consultant to the chairman, I had to know 24 what was possible to do -- 25 Q. Right.</p> <p style="text-align: right;">233</p>	<p>1 Q. And then what about the next page, 59, "Congress 2 17-A," that one's -- there's some pretty major 3 changes at this point. 4 A. Yeah, something that I was pretty sure wasn't 5 going to work at all. 6 Q. Why is that? 7 A. Well, first of all, it doesn't comply with the 8 criteria to try and keep incumbents to the 9 extent as possible in their districts. And, 10 again, it's just an experiment to see what the 11 possibilities could be. 12 Q. So before you had spoken with the chairman, what 13 did you -- how -- how did you know that keeping 14 incumbents in their districts would be a 15 criteria that they would want you to follow? 16 A. There's a big basic difference between 17 experimental maps that I produce and what I have 18 spoken to the chairman about as the general 19 criteria that they were interested in doing. 20 I think probably at this point I had 21 spoken to them, but that doesn't -- that means 22 that I have to start knowing what to do and then 23 modulate the maps or backtrack and get them to a 24 form that is within the bounds of the criteria. 25 Q. So when you spoke with them at some point before</p> <p style="text-align: right;">235</p>
<p>1 A. -- and then say, okay, here are some examples -- 2 here's an example. I don't know that they saw 3 all these maps, and I probably decided that they 4 weren't actually germane to the decisions they 5 needed to make. 6 Q. And what made you conclude that? 7 A. Well, first of all, they weren't complete plans. 8 They weren't -- and as you can see, they contain 9 a lot of the old districts, which particularly 10 you can see the shape of the 4th, which I was 11 pretty much convinced that was going to have to 12 go in its present form. 13 So I was just playing with different 14 areas of the state to try to figure out what was 15 possible so I can say, all right, this is what 16 we -- a direction we may need to go in. Again, 17 this was in my mind saying number one 18 overarching requirement was that we had to draw 19 a map that the Court would approve. 20 Q. So it's your testimony that you don't recall 21 whether the maps beginning on Page 64 up to 22 Page 60 were shown to the redistricting chairman 23 or not? 24 A. No, I don't think these were. These were all 25 drawn very close together in time.</p> <p style="text-align: right;">234</p>	<p>1 you tried the experiment that was "Congress 2 17-A," what did they tell you the criteria were 3 that they wanted you to follow? 4 A. They told me what the criteria was to follow 5 pretty much after the Court ruling came out, but 6 I certainly wasn't going to waste their time 7 looking at maps that I didn't think were ever 8 going to be acceptable either to them or to 9 their criteria. 10 Q. Well, you testified before that when you talked 11 with them, you didn't have anything in writing 12 but you could -- you didn't take any notes but 13 you could remember the criteria they were giving 14 you that they wanted you to follow. 15 A. Well, I don't think you have to take notes to 16 remember the criteria. They were pretty simple. 17 Q. So my question to you is can you -- because as I 18 heard you outline the eight things that your 19 criteria were, it's not exactly the same as what 20 these written criteria are. So what were the 21 criteria that they told you? 22 A. Well, first of all, I've stated many times 23 during this deposition that the overarching 24 requirement of this map was that it be 25 acceptable to the Court and the Court not strike</p> <p style="text-align: right;">236</p>

<p>1 it down, and even though that's not in the 2 criteria statement, it's absolutely mandatory 3 because there's no use wasting your time drawing 4 a map that you don't think the Court will do. 5 So you might call it a criteria, but 6 I'd likely say that it was a mandate that you 7 had to draw a map acceptable to the Court. 8 They'd be upset if you didn't do that. 9 And I knew that we had to have 10 one-person, one-vote, and I knew we had to have 11 contiguity and I knew we had to have a better 12 degree of compactness than the other map. We 13 had to adhere to whole counties because -- and 14 whole precincts because, again, that had been 15 mentioned. It had been mentioned both at trial 16 and at -- and in the opinion, at least in my 17 recollection of the parts of it that I read. 18 We obviously would avoid any contiguity 19 errors and we would avoid, to the extent 20 possible, of pairing incumbents, although it 21 ended up with one pair and that was actually a 22 Republican with a Democrat. And that was 23 certainly enough to be started on the map. 24 Q. So those were -- so what you just outlined are 25 the things that you heard verbally from the</p> <p style="text-align: right;">237</p>	<p>1 but make sure Anita gets to finish her question. 2 THE WITNESS: I'm sorry. Just hit me. 3 BY MS. EARLS: 4 Q. And that's the combination that you'll give us 5 the formula for? 6 A. Yes. 7 Q. Okay. So then let me understand, are the rest 8 of the maps from Pages 58 -- so "Congress ST-B" 9 -- and this is pages back up to 42 of 10 Exhibit 31, those are all alternatives that you 11 looked at after you had spoken to the chairman 12 and you had a mutual understanding about the 13 criteria? 14 A. I think two or three of them I may have done 15 right off the bat just to see what is possible. 16 I think you have to get up to what you've 17 labeled as 53 before you start seeing something 18 near the format that the final map took, and I 19 say near the format. 20 Q. So that would be the -- 21 A. 19-C. 22 Q. 19-C. 23 A. Page 53. 24 Q. And so is that a map that you then showed to the 25 chairman?</p> <p style="text-align: right;">239</p>
<p>1 chairman? 2 A. It's what I remember that I heard verbally. I'm 3 sorry, again, it's been nine months now, and it 4 was a pretty fast process, I know, takes a lot 5 of energy just to draw the maps. 6 Q. And you also testified that you had some input 7 on the criteria, on the written criteria. Did 8 you have discussions with them about each of 9 these factors that were ultimately adopted as 10 being appropriate for criteria for these plans? 11 A. I don't remember whether I had a discussion with 12 each and every one, but I may have had 13 discussions with them -- I did have discussions 14 with them that would lead them to draw up that 15 criteria. Those factors were, for the most 16 part, discussed right off the bat. 17 Q. So the other thing that I think has not come out 18 clearly when you were drawing these districts in 19 2016, what was the data that you had on your 20 screen in the thematic to pull up as you were -- 21 A. The thematic were the combination of different 22 races, political races. 23 Q. Right. Election contests? 24 A. Election contests. 25 MR. FARR: Hey, Tom, I know it's late,</p> <p style="text-align: right;">238</p>	<p>1 A. I believe probably so. I don't know whether I 2 showed it to both of them, but certainly they or 3 their representative saw that, that map. 4 Q. And can you explain sort of what the thinking 5 was that got you from that map to the later 6 versions of the map? In other words, what 7 feedback did you get on this map that caused you 8 to make the changes reflected in the later maps? 9 A. I'll just move around the map if you want me to. 10 Q. Yes, please. 11 A. Okay. As you can see from looking at the two 12 maps -- do you have copies of them over there? 13 I'm looking at the map which is Page 42 and I'm 14 looking at the map which is Page 53, which is 15 the final version. 16 You can see that District 1 is pretty 17 near the format of the final map. District 3 18 changed the boundary line between 7 and 3 to put 19 Onslow County in the 7th and to take Duplin and 20 Wayne out of 7 and put them into the 13th. 21 The configuration of the 9th district 22 is pretty much as it turned out in the end 23 except that the division line in Cumberland 24 County is somewhat different. 25 The 12th is pretty much the format that</p> <p style="text-align: right;">240</p>

<p>1 turned out in the end. The 10th is the same.</p> <p>2 The 5th is different in -- because the</p> <p>3 13th was an attempt to split fewer counties. So</p> <p>4 the split in Caldwell is different and it</p> <p>5 puts -- it gets rid of the split into Iredell</p> <p>6 County.</p> <p>7 The boundary between the 13th and --</p> <p>8 what's then the 13th in the final map was -- I'm</p> <p>9 sorry.</p> <p>10 The 2nd was in the beginning map,</p> <p>11 changed the number to the 13th. There was a</p> <p>12 number split at the last minute, a number shift.</p> <p>13 So it's a different line in Guilford and some</p> <p>14 shifts there of counties.</p> <p>15 8 is pretty much the same.</p> <p>16 What shows up as the 2nd on the final</p> <p>17 map was the 13th on this map that we're talking</p> <p>18 about. So the numbers were shifted, but it's</p> <p>19 somewhat different. You can see on -- see where</p> <p>20 the number 4 is on the map, on 19-C, the number</p> <p>21 for District 4 --</p> <p>22 Q. Yes.</p> <p>23 A. -- in Wake County. There's a little appendage</p> <p>24 that goes down from the middle of 13 into that</p> <p>25 yellow area. That was changed.</p> <p style="text-align: right;">241</p>	<p>1 mean by that?</p> <p>2 A. I mean they probably could have made much more</p> <p>3 than about a percent difference or something</p> <p>4 like that.</p> <p>5 Q. A percent difference in what?</p> <p>6 A. In the political makeup of the plan. Again, I'd</p> <p>7 have to -- have to look at the two maps in</p> <p>8 greater detail, but it's pretty much</p> <p>9 substantially the same format. So most of the</p> <p>10 changes were cosmetic, really.</p> <p>11 The only major shift was in -- I'm</p> <p>12 trying to look at the map and -- in the --</p> <p>13 what's labeled in the final map contingency, the</p> <p>14 6th -- the division actually of Guilford County.</p> <p>15 And, of course, one of the criteria that I was</p> <p>16 directed was to avoid splitting counties. And</p> <p>17 in Congress 19-C, which is Page 53, you can see</p> <p>18 that there's a triple split of Guilford and that</p> <p>19 wasn't acceptable.</p> <p>20 Q. But not all the changes resulted in fewer split</p> <p>21 counties.</p> <p>22 A. No, but, for instance, the change we see in 13</p> <p>23 and 4 was actually more a compactness change</p> <p>24 than anything else.</p> <p>25 Q. So help me understand, in this criteria,</p> <p style="text-align: right;">243</p>
<p>1 I think that's pretty much the</p> <p>2 differences. I think the Buncombe County line</p> <p>3 was maybe a little bit different, but I'm not</p> <p>4 sure there's enough detail there.</p> <p>5 Q. What I was trying to understand is what -- what</p> <p>6 were the reasons for those changes. You gave a</p> <p>7 couple of reasons, but are there any -- you</p> <p>8 mentioned for a couple of the changes it was</p> <p>9 done to avoid dividing a county, but are</p> <p>10 there -- some of these changes don't avoid</p> <p>11 dividing a county.</p> <p>12 What were the reasons for those</p> <p>13 changes?</p> <p>14 A. I can't tell you for sure whether 19-C was what</p> <p>15 we call zeroed out, had zero population</p> <p>16 deviations.</p> <p>17 Q. But these changes are more substantial than what</p> <p>18 you would need to zero out the plan.</p> <p>19 A. Yes, I agree with you. Some of them were --</p> <p>20 some of them were political in nature, although</p> <p>21 I don't know they made much difference</p> <p>22 politically, actually. Some degree of political</p> <p>23 change.</p> <p>24 Q. And when you say you don't think that they made</p> <p>25 much difference politically, what -- what do you</p> <p style="text-align: right;">242</p>	<p>1 compactness is defined -- and now I'm looking at</p> <p>2 what was marked as Exhibit 24, I think.</p> <p>3 Do you have that in front of you?</p> <p>4 A. I think it's 24. Do you want a copy?</p> <p>5 Q. No. I have it here.</p> <p>6 In Exhibit 24, Compactness under the</p> <p>7 criteria is defined as -- or it says that you</p> <p>8 keep more counties and VTDs whole as compared to</p> <p>9 the current enacted plan and then it talks about</p> <p>10 when you can divide counties.</p> <p>11 Is there any other -- and you testified</p> <p>12 that you didn't run the compactness measures</p> <p>13 prior to the plan being enacted. So other than</p> <p>14 looking at keeping counties whole and VTDs</p> <p>15 whole, was there anything else that you</p> <p>16 evaluated in determining the compactness of the</p> <p>17 districts?</p> <p>18 A. Well, 50 years of drawing districts and knowing</p> <p>19 a lot about compactness, I knew there was not</p> <p>20 going to be any problem with the fact that these</p> <p>21 new districts were going to be significantly</p> <p>22 more compact than the plan was that was tossed</p> <p>23 out by the Court.</p> <p>24 Q. Right. But when you just told me, for example,</p> <p>25 that a change that was made between the map</p> <p style="text-align: right;">244</p>

<p>1 "Congress 19-C" on Page 53 and the ultimate 2 enacted map "Congress 2016 Contingent-C" on 3 Page 42, you said, well, we made that change to 4 make it more compact, and I was trying to 5 understand what else you were using to make that 6 judgment other than it didn't split a county or 7 it didn't split VTDs.</p> <p>8 A. Well, they have a test that is actually 9 recognized, to some extent, called the 10 interocular test and the invention of Bernie 11 Grofman --</p> <p>12 Q. That's right.</p> <p>13 A. -- which is the eyeball test, and one could see 14 that the compactness score for 14 was going to 15 be significantly affected by that intrusion into 16 the middle of the district. So it was 17 determined it would be better to do -- to not do 18 that unnecessarily.</p> <p>19 MR. FARR: For what district?</p> <p>20 THE WITNESS: This was the 4th district 21 in the plan. It was an intrusion on the 22 "Congress 19-C" which was an earlier map into 23 the yellow district right where the "W" is in 24 Wake County. And even though the district is 25 small, the compactness tests are not -- some</p> <p style="text-align: right;">245</p>	<p>1 Q. But you knew that without actually looking at 2 the racial demographics?</p> <p>3 A. Pretty much. Oh, yes. Past experience.</p> <p>4 And that was the only district which 5 was a Voting Rights district in the state or has 6 been since -- since the initial map that was 7 thrown out in the Shaw decision.</p> <p>8 Q. I want to look at District 19 -- or Map 19-H 9 which -- which is -- it's number 48, Page 48 on 10 Exhibit 31?</p> <p>11 A. H?</p> <p>12 Q. Yes. Congress 19-H. Did you -- did you do a 13 political impact analysis using the formula with 14 the average of election returns for this map?</p> <p>15 A. Okay, I'm trying to find it.</p> <p>16 Q. I'm sorry. It's Page 48 of Exhibit 31.</p> <p>17 A. I got them mixed. Okay.</p> <p>18 I want to make you understand one 19 thing. There was a difference between the 20 political statistics that we may have looked at 21 for the plan as a whole after -- when we were 22 kind of benchmarking the plan and the formula 23 that was in the thematic display. So we might 24 look at several different indicator races, such 25 as 2014 Senate or a governor race.</p> <p style="text-align: right;">247</p>
<p>1 compactness tests are not significantly affected 2 by the actual size of the district but by the 3 shape of the district.</p> <p>4 BY MS. EARLS:</p> <p>5 Q. So you were looking at it and determining based 6 on that that it was more compact by looking at 7 it?</p> <p>8 A. Yes, and it would be.</p> <p>9 Q. You also testified earlier about the Voting 10 Rights Act compliance. And how did you go about 11 ensuring Voting Rights Act compliance in drawing 12 the 2016 congressional plan?</p> <p>13 A. Well, first of all, the only district we had to 14 worry about was District 1, and since it was 15 drawn in the general area that District 1 has 16 been in for decades, actually, and since I was 17 familiar with the old House of Representative 18 districts which are -- actually have been 19 contested now, but which were drawn in 2011, I 20 knew that this new configuration was going to be 21 acceptable under the Voting Rights Act. And 22 indeed, if it hadn't been, the minute that 23 somebody wanted to look at those racial scores, 24 they would probably be objecting to it, and 25 those were known before the map was passed.</p> <p style="text-align: right;">246</p>	<p>1 Q. So --</p> <p>2 A. So if you're looking -- we would know what the 3 politics of that plan were by looking at some of 4 the races individually.</p> <p>5 I didn't have -- I didn't have the data 6 point in my database that could be produced 7 inside Maptitude that would average out all 8 these scores. I suppose somebody could do it 9 who knew the system better than I did, but all I 10 had was me and eight days.</p> <p>11 Q. Right. But while you might have been looking at 12 different combinations of election returns, I 13 also want to make sure we have the full universe 14 of election returns that you potentially were 15 looking at.</p> <p>16 And is it correct that the list of 17 elections in Exhibit 28, the 2016 Redistricting 18 Database Field Key --</p> <p>19 A. 28.</p> <p>20 Q. Exhibit 28.</p> <p>21 A. Let me find it.</p> <p>22 Yes, I believe that the races that I 23 used for the thematic -- is that what you want?</p> <p>24 Q. Well, for both the thematic and then I'll ask 25 you separately for when you were evaluating</p> <p style="text-align: right;">248</p>

<p>1 the --</p> <p>2 A. Yes. These were what were -- well, these are</p> <p>3 the races that -- the races that I used came</p> <p>4 from races from this list.</p> <p>5 Q. Okay. So there weren't any additional election</p> <p>6 returns or other types of political data that</p> <p>7 you were evaluating at any point in time?</p> <p>8 A. No.</p> <p>9 Q. So then going back to Congress 19-H, is it</p> <p>10 possible that this was a map that had -- where</p> <p>11 the political data showed that it would be a 9-4</p> <p>12 set of districts instead of a 10-3?</p> <p>13 A. Well, first of all, I don't agree with the</p> <p>14 premise that the map that we have now is a 10-3</p> <p>15 plan, and I stated that before.</p> <p>16 Q. Why not?</p> <p>17 A. Because I think there are districts in there</p> <p>18 that in a good election year with good</p> <p>19 candidates the Democrats could carry.</p> <p>20 Q. How many?</p> <p>21 A. Three maybe.</p> <p>22 Q. So you think that it could be a 7-6 plan, three</p> <p>23 additional, are you saying?</p> <p>24 A. That would be 6-7, yes.</p> <p>25 Q. And are there some -- are there any particular</p> <p style="text-align: right;">249</p>	<p>1 MR. BONDURANT: And the mathematical</p> <p>2 average or whatever.</p> <p>3 MR. FARR: Right. We'll know when we</p> <p>4 can do that before we break up this week, I</p> <p>5 hope.</p> <p>6 MR. BONDURANT: That would be nice.</p> <p>7 THE WITNESS: I'll give you --</p> <p>8 MR. FARR: Maybe we can do it before</p> <p>9 you leave.</p> <p>10 THE WITNESS: I'll give you the</p> <p>11 formula, the actual formula that was entered in</p> <p>12 Maptitude, and I'll give you the races that</p> <p>13 entered.</p> <p>14 MR. BONDURANT: Good. Thank you.</p> <p>15 THE WITNESS: You're welcome.</p> <p>16 THE VIDEOGRAPHER: This concludes the</p> <p>17 deposition. The time is 6:15 p.m.</p> <p>18 [SIGNATURE RESERVED]</p> <p>19 [DEPOSITION CONCLUDED AT 6:15 P.M.]</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">251</p>
<p>1 election returns that you were relying on to</p> <p>2 make that calculus?</p> <p>3 A. Yes. And I've agreed to give you --</p> <p>4 Q. So again, that was based on your formula?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So then do you recall what Congress 19-H,</p> <p>7 what your formula generated in terms of the</p> <p>8 political impact of this set of districts?</p> <p>9 A. Again, I'm not sure that I actually calculated</p> <p>10 on a districtwide basis, so --</p> <p>11 Q. You mean on a plan-wide basis?</p> <p>12 A. For the whole plan, yes.</p> <p>13 Q. Okay.</p> <p>14 A. First of all, it split an unnecessary number of</p> <p>15 counties too.</p> <p>16 Q. Those are all my questions. Thank you.</p> <p>17 A. Okay.</p> <p>18 MR. FARR: Thank you.</p> <p>19 MR. BONDURANT: Tom, will you let us</p> <p>20 know when he can give us the information</p> <p>21 regarding these specific elections that he used</p> <p>22 to prepare the 2016 plan.</p> <p>23 MR. FARR: Sure. We'll try to tell you</p> <p>24 when he can get those back to you before you</p> <p>25 leave.</p> <p style="text-align: right;">250</p>	<p>1 ACKNOWLEDGEMENT OF DEPONENT</p> <p>2</p> <p>3 I, THOMAS B. HOFELLER, Ph.D., declare under the</p> <p>4 penalties of perjury under the State of North Carolina that</p> <p>5 I have read the foregoing pages, which contain a correct</p> <p>6 transcription of answers made by me to the questions</p> <p>7 therein recorded, with the exception(s) and/or addition(s)</p> <p>8 reflected on the correction sheet attached hereto, if any.</p> <p>9 Signed this the day of , 2017.</p> <p>10</p> <p>11</p> <p>12 THOMAS B. HOFELLER, Ph.D.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">252</p>

1	ERRATA SHEET		
2	Case Name: Common Cause v Rucho / LWV NC v Rucho		
3	Witness Name: THOMAS B. HOFELLER, Ph.D.		
4	Deposition Date: Tuesday, January 24, 2017		
5			
6	Page/Line	Reads	Should Read
7	___/___	_____	_____
8	___/___	_____	_____
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23			
24			
25	Signature	Date	
			253

1	STATE OF NORTH CAROLINA)		
) CERTIFICATE		
2	COUNTY OF WAKE)		
3			
4			
5	I, DENISE MYERS BYRD, Court Reporter and Notary		
6	Public, the officer before whom the foregoing proceeding		
7	was conducted, do hereby certify that the witness(es) whose		
8	testimony appears in the foregoing proceeding were duly		
9	sworn by me; that the testimony of said witness(es) were		
10	taken by me to the best of my ability and thereafter		
11	transcribed under my supervision; and that the foregoing		
12	pages, inclusive, constitute a true and accurate		
13	transcription of the testimony of the witness(es).		
14	I do further certify that I am neither counsel for,		
15	related to, nor employed by any of the parties to this		
16	action, and further, that I am not a relative or employee		
17	of any attorney or counsel employed by the parties thereof,		
18	nor financially or otherwise interested in the outcome of		
19	said action.		
20	This the 6th day of February 2017.		
21			
22			
23			
24	Denise Myers Byrd		
25	CSR 8340, RPR, CLR 102409-02		
			254

Exhibit B

<p>IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA</p> <p>COMMON CAUSE, et al.,)) Plaintiffs,) vs.) Civil Action No.)) 1:16-CV-2016-WO-JEP</p> <p>ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) Joint Select Committee on) Congressional Redistricting,) et al.,)) Defendants.))</p> <p>LEAGUE OF WOMEN VOTERS OF NORTH) CAROLINA, et al.,)) Plaintiffs,) vs.) Civil Action No. 1:16-CV-1164</p> <p>ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) 2016 Joint Select Committee on) Congressional Redistricting,) et al,)) Defendants.)))</p> <p>VIDEOTAPED DEPOSITION OF REPRESENTATIVE DAVID LEWIS</p> <hr/> <p>9:28 A.M. THURSDAY, JANUARY 26, 2017</p> <hr/> <p>POYNER SPRUILL 301 FAYETTEVILLE STREET, SUITE 1900 RALEIGH, NORTH CAROLINA</p>	<p>1</p> <p>2 NC DEPARTMENT OF JUSTICE</p> <p>3 BY: ALEC PETERS, ESQ.</p> <p>4 JAMES BERNIER, JR., ESQ.</p> <p>5 PO Box 629</p> <p>6 Raleigh, NC 27602</p> <p>7 (919) 716-6400</p> <p>8 APeters@ncdoj.gov</p> <p>9 JBernier@ncdog.gov</p> <p>10</p> <p>11 Also Present: Alesha Brown, SCSJ</p> <p>12</p> <p>13 The Reporter: Discovery Court Reporters</p> <p>14 and Legal Videographers, LLC</p> <p>15 BY: DENISE MYERS BYRD, CSR 8340</p> <p>16 BRENT TROUBLEFIELD,</p> <p>17 VIDEOGRAPHER</p> <p>18 4208 Six Forks Road, Suite 1000</p> <p>19 Raleigh, NC 27609</p> <p>20 (919) 424-8242</p> <p>21 (919) 649-9998 Direct</p> <p>22 Denise@DiscoveryDepo.com</p> <p>23</p> <p>24 --o0o--</p> <p>25</p> <p>INDEX OF EXAMINATION</p> <p>Page</p> <p>By Mr. Thorpe..... 6</p> <p>--o0o--</p>
<p>1 APPEARANCES</p> <p>2</p> <p>3 For the Plaintiffs: Common Cause, et al.</p> <p>4 BONDURANT MIXSON & ELMORE</p> <p>5 BY: EMMET J. BONDURANT, ESQ.</p> <p>6 BENJAMIN W. THORPE, ESQ.</p> <p>7 1201 W. Peachtree Street, NW</p> <p>8 Suite 3900</p> <p>9 Atlanta, GA 30309</p> <p>10 (404) 881-4100</p> <p>11 Bondurant@bmelaw.com</p> <p>12 BThorpe@bmelaw.com</p> <p>13</p> <p>14 POYNER SPRUILL</p> <p>15 BY: CAROLINE P. MACKIE, ESQ.</p> <p>16 301 Fayetteville Street</p> <p>17 Suite 1900</p> <p>18 Raleigh, NC 27601</p> <p>19 (919) 783-1140</p> <p>20 ESpeas@poynerspruill.com</p> <p>21 CMackie@poynerspruill.com</p> <p>22</p> <p>23 For the Plaintiffs: League of Women Voters, et al.</p> <p>24</p> <p>25 SOUTHERN COALITION FOR</p> <p>SOCIAL JUSTICE</p> <p>BY: ANITA S. EARLS, ESQ.</p> <p>1415 Highway 54</p> <p>Suite 101</p> <p>Durham, NC 27707</p> <p>(919) 323-3380 x 115</p> <p>AnitaEarls@southerncoalition.org</p> <p>For the Defendants:</p> <p>OGLETREE DEAKINS NASH SMOAK</p> <p>BY: THOMAS A. FARR, ESQ.</p> <p>PHILLIP J. STRACH, ESQ.</p> <p>4208 Six Fork Road</p> <p>Suite 1100</p> <p>Raleigh, NC 27609</p> <p>(919) 787-9700</p> <p>Thomas.Farr@ogletreedeakins.com</p> <p>Phil.Strach@Ogletreedeakins.com</p>	<p>1 INDEX OF EXHIBITS</p> <p>2 EXHIBIT NO. DESCRIPTION Page</p> <p>3 39 Outlook calendar of Rep. David Lewis 41</p> <p>4 40 House Floor Transcripts 147</p> <p>5 41 Article: "Legislators Meet; Coalition</p> <p>6 Calls for Redistricting" 175</p> <p>7</p> <p>8 --o0o--</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>1 THE VIDEOGRAPHER: On record at 2 9:28 a.m. Today's date is January 26, 2017. 3 This is the videotaped deposition of 4 David Lewis taken in the matter of Common Cause, 5 et al., versus Robert A. Rucho, et al., in the 6 United States District Court for the Middle 7 District of North Carolina, Civil Action Number 8 116-CV-1026-WO-JEP. 9 Also in the matter of League of Women 10 Voters of North Carolina, et al., versus Robert 11 A. Rucho, et al., in the United States District 12 Court for the Middle District of North Carolina, 13 Civil Action Number 116-CV-1164. 14 Would counsel please introduce 15 themselves. 16 MR. THORPE: Ben Thorpe representing 17 the plaintiffs in the Common Cause case. 18 MR. BONDURANT: Emmet Bondurant 19 representing the plaintiffs in the Common Cause 20 case. 21 MS. EARLS: Anita Earls representing 22 the League of Women Voters plaintiffs. 23 MS. MACKIE: Caroline Mackie, Common 24 Cause plaintiffs. 25 MR. PETERS: Alec Peters, the Attorney</p> <p>5</p>	<p>1 Q. And it is our understanding that you have waived 2 your legislative privilege to be here today. 3 MR. FARR: He's waived his legislative 4 privilege in reference to the 2016 Congressional 5 Plan and the 2011 Congressional Plan. 6 BY MR. THORPE: 7 Q. The plaintiffs in these cases have served 8 discovery requests on defendants, and I want to 9 know what search of your own documents you have 10 been requested to do in order to comply with 11 those discovery requests. 12 Have you been asked to search your 13 personal e-mail or your state e-mail for the 14 purpose of this case? 15 A. I believe I was, yes, sir. 16 Q. And how did you form that search? 17 A. The legislature has a procedure in place. Dan 18 Frye is the head of the Information Service 19 Division. He and Bart Goodson, who at the time 20 was the counsel to Speaker Moore, performed the 21 searches as were required. 22 Q. And they actually performed the searches on both 23 your state and personal accounts? 24 A. Yes, sir. 25 Q. Did they search anything beyond e-mail? Did</p> <p>7</p>
<p>1 General's Office on behalf of defendants in both 2 cases. 3 MR. BERNIER: James Bernier, Jr., on 4 behalf of the defendants in both cases. 5 MR. STRACH: Phil Strach, Ogletree 6 Deakins on behalf of the defendants in both 7 cases. 8 MR. FARR: Tom Farr, Raleigh office of 9 Ogletree Deakins here on behalf of the 10 defendants in both cases. 11 DAVID LEWIS, 12 having been first duly sworn or affirmed by the 13 Certified Shorthand Reporter and Notary Public 14 to tell the truth, the whole truth and nothing 15 but the truth, testified as follows: 16 EXAMINATION 17 BY MR. THORPE: 18 Q. Good morning, Representative Lewis. My name is 19 Ben Thorpe. I represent the plaintiffs in the 20 Common Cause case. I'll be taking your 21 deposition today. 22 Could you state your name and address 23 for the record, please, sir. 24 A. My name is David Lewis. I reside at 118 25 Kingsway Drive in Dunn, North Carolina.</p> <p>6</p>	<p>1 they search any paper documents? 2 A. They asked me if I had any notebook or anything 3 like that, and I didn't have anything that I 4 thought was responsive. 5 Q. So they requested responsive paper documents, 6 correct? 7 A. Yes, sir. 8 Q. But you found no responsive paper documents? 9 A. No, sir. 10 Q. And you searched your legislative office for 11 those paper documents? 12 A. Yes, sir. 13 Q. Did you also search your home for those 14 documents? 15 A. Yes, sir. 16 Q. We'll return to some of the scheduling issues 17 because I understand you'll be producing some of 18 those later in the deposition, but is it your 19 regular practice to schedule appointments or 20 meetings with other members of the legislature 21 or related to your legislative duties in some 22 electronic format? 23 A. Yes, sir. 24 Q. What format is that? 25 A. If I may, I think it may help you understand if</p> <p>8</p>

<p>1 I give a little bit longer answer.</p> <p>2 Q. Please.</p> <p>3 A. The state provides a Microsoft Outlook system</p> <p>4 that members are allowed to use, but our</p> <p>5 Legislative Ethics Commission issued an opinion</p> <p>6 that only official business should be recorded</p> <p>7 on that calendar, so that makes it very</p> <p>8 difficult as a part-time legislator for our</p> <p>9 staff to know if we're going to be in town or</p> <p>10 out of town or what we were doing.</p> <p>11 The concern that the Legislative Ethics</p> <p>12 Commission came up with is if I were going to</p> <p>13 put -- for instance, that maybe I was going to</p> <p>14 attend a political fundraiser or maybe I was</p> <p>15 going to meet with a perspective client, that</p> <p>16 that might be considered using the state</p> <p>17 resources for non-official business.</p> <p>18 I've been trying to figure out a way to</p> <p>19 streamline that, but as of yet have not been</p> <p>20 able to reach a consensus.</p> <p>21 For the record, the state -- the</p> <p>22 Legislative Ethics Commission is appointed by</p> <p>23 the Speaker. It consists of three Democrats and</p> <p>24 three Republicans, and the Senate appoints a</p> <p>25 like body. So we try to run these issues</p> <p style="text-align: right;">9</p>	<p>1 for this deposition? Prior to depositions</p> <p>2 beginning on Tuesday, did you meet with</p> <p>3 Dr. Hofeller in preparation for this deposition?</p> <p>4 A. I did not meet with Dr. Hofeller in preparation</p> <p>5 for this deposition. I cannot recall if he was</p> <p>6 present at a briefing that may have been with</p> <p>7 the attorneys.</p> <p>8 Q. And that briefing would be in preparation for</p> <p>9 this deposition or separate?</p> <p>10 A. Yes, sir. Yes, sir.</p> <p>11 Q. So just in terms of your legislative background,</p> <p>12 when were you first elected to the</p> <p>13 North Carolina legislature?</p> <p>14 A. I was elected in 2002.</p> <p>15 Q. And when did your involvement in redistricting</p> <p>16 begin beyond voting on plans?</p> <p>17 A. Kind of an interesting answer, if you'll give me</p> <p>18 just a moment. The election of 2002 was a very</p> <p>19 unusual election. It's one in which the</p> <p>20 legislative maps were challenged and actual</p> <p>21 elections put on hold and rescheduled I think</p> <p>22 three times. In fact, we kind of joked it's</p> <p>23 like the football game that they keep moving the</p> <p>24 end time and you never really know what the</p> <p>25 field's going to look like.</p> <p style="text-align: right;">11</p>
<p>1 through them to make sure nobody gets in</p> <p>2 trouble. I say all that to say that forces</p> <p>3 members to basically maintain their own</p> <p>4 calendar.</p> <p>5 I use an iPhone. It is linked in with</p> <p>6 the Microsoft Exchange Server. And we'll be</p> <p>7 presenting the calendar from those dates to you</p> <p>8 very shortly.</p> <p>9 Q. Thank you.</p> <p>10 So in preparing for this deposition,</p> <p>11 what documents did you review?</p> <p>12 A. I reviewed the complaint that was filed. I</p> <p>13 reviewed the transcripts of the Joint</p> <p>14 Legislative Redistricting Committee. I reviewed</p> <p>15 the transcripts from the House Redistricting</p> <p>16 Committee. I reviewed the transcripts from the</p> <p>17 Senate Redistricting Committee. I reviewed the</p> <p>18 transcripts from the public hearing that was</p> <p>19 held, and I also took a look at the 2011</p> <p>20 Legislative Guide to Redistricting.</p> <p>21 Q. And who did you meet with in preparation for</p> <p>22 this deposition?</p> <p>23 A. To prepare for this deposition, I met with our</p> <p>24 legal team who are seated in this room today.</p> <p>25 Q. Did you meet with Dr. Hofeller in preparation</p> <p style="text-align: right;">10</p>	<p>1 So I became, I guess, acutely</p> <p>2 interested in it because I was having to run in</p> <p>3 a year in which litigation was radically</p> <p>4 changing the normal schedule of elections.</p> <p>5 Other than that, my -- I was elected in</p> <p>6 2002, and in 2003, one of my duties was to vote</p> <p>7 on the redistricting plan that was presented,</p> <p>8 but I was in no way involved in the preparation</p> <p>9 of that plan.</p> <p>10 In 2011, then Speaker Tillis asked me</p> <p>11 to serve as senior chairman of the House</p> <p>12 Redistricting Committee. The House is a big</p> <p>13 body, so it's not unusual to have multiple</p> <p>14 chairs. My designation as senior chair meant</p> <p>15 that I was the overall chair of the committee.</p> <p>16 So in that capacity, I led the House</p> <p>17 redistricting effort for both the U.S. Congress</p> <p>18 and the North Carolina House and served in that</p> <p>19 capacity from early 2011 until that term ended.</p> <p>20 I do not believe the House reconstituted a</p> <p>21 redistricting committee.</p> <p>22 In February of 2016, then current</p> <p>23 Speaker Moore and Senator Berger appointed a</p> <p>24 Joint Legislative Redistricting Committee</p> <p>25 between the House and the Senate to respond to</p> <p style="text-align: right;">12</p>

<p>1 the recent court ruling in the Harris case, and</p> <p>2 I was named chair for the House of that</p> <p>3 committee</p> <p>4 Q. In 2011 had you requested or made known your</p> <p>5 interest in serving as senior chair of the</p> <p>6 redistricting committee?</p> <p>7 A. I had not.</p> <p>8 Q. Why do you feel you were chosen to lead that?</p> <p>9 A. Candidly, I think there's a couple of reasons.</p> <p>10 One, it's obvious that I'm unelectable to</p> <p>11 congress, and so I think the Speaker felt that I</p> <p>12 would not have personal ambition at stake.</p> <p>13 Two, I had worked with my colleagues to</p> <p>14 develop a level of trust and fairness. I think</p> <p>15 being the redistricting chair means, you know, a</p> <p>16 lot of people take the decisions that have to</p> <p>17 come out that are policy decisions very</p> <p>18 personally, and I think the Speaker felt that my</p> <p>19 personality would be able to win enough votes to</p> <p>20 pass a plan without angering too many folks.</p> <p>21 Q. And when you say people may be angry because</p> <p>22 they take decisions personally, how -- in the</p> <p>23 context of serving in the legislature, how does</p> <p>24 that get communicated to a redistricting chair?</p> <p>25 A. Well, the best way to communicate is to vote no,</p> <p style="text-align: right;">13</p>	<p>1 the committee in accordance with the Chamber</p> <p>2 rules. The chair is generally afforded the</p> <p>3 opportunity to appoint committee staff such as</p> <p>4 they are. We're not like congress where we have</p> <p>5 necessarily large staffs.</p> <p>6 The specific goal that Senator Rucho</p> <p>7 and I had legislatively was to try and create a</p> <p>8 plan -- we were -- we were acutely aware that</p> <p>9 North Carolina, I believe along with Texas</p> <p>10 combined have more legislative -- I mean more</p> <p>11 redistricting appeals and litigation than any</p> <p>12 other state. So we tried to develop a plan that</p> <p>13 we thought followed the law. That's largely</p> <p>14 documented in the legislative guide of 2011.</p> <p>15 Off the top of my head, certainly we</p> <p>16 wanted -- we understood in congressional</p> <p>17 redistricting that you had the one-person,</p> <p>18 one-vote requirement that the districts needed</p> <p>19 to be the same size so everybody's vote counts</p> <p>20 the same. There was compliance with the Voting</p> <p>21 Rights Act. North Carolina had one Voting</p> <p>22 Rights Act district. We paid special attention</p> <p>23 to that. And then we drew the rest of the</p> <p>24 state.</p> <p>25 Q. And when you say "we drew the rest of the</p> <p style="text-align: right;">15</p>
<p>1 but certainly you have conversations, people</p> <p>2 say, you know, I wish you would put this line</p> <p>3 here or you know I've always represented</p> <p>4 County X and now I will no longer represent</p> <p>5 County X, why are you doing this to me. Those</p> <p>6 are the kinds of things that are said both in a</p> <p>7 formal setting such as a redistricting committee</p> <p>8 but also in the more intimate setting of the</p> <p>9 hallways of the legislature or in the</p> <p>10 legislative cafeteria, et cetera.</p> <p>11 Q. And do legislators express those sorts of</p> <p>12 concerns that you just talked about as to both</p> <p>13 state legislative and congressional lines?</p> <p>14 A. Yes.</p> <p>15 Q. I want to talk about the 2011 plan and your role</p> <p>16 in the creation of that plan.</p> <p>17 You acted as senior chair of the House</p> <p>18 Redistricting Committee and worked with</p> <p>19 Senator Rucho who was chairing the Senate</p> <p>20 committee, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And how was your role and Senator Rucho's role</p> <p>23 defined by those chair positions?</p> <p>24 A. The chair of a legislative committee is</p> <p>25 responsible for the overall administration of</p> <p style="text-align: right;">14</p>	<p>1 state," you did not actually draw the lines for</p> <p>2 the maps, correct?</p> <p>3 A. I did not actually maneuver the mouse to draw</p> <p>4 the lines, no, sir.</p> <p>5 Q. Who actually drew the lines for those maps?</p> <p>6 A. Dr. Tom Hofeller.</p> <p>7 Q. And Dr. Tom Hofeller was hired by you and</p> <p>8 Senator Rucho, correct?</p> <p>9 A. During the 2011 cycle, I am unclear of exactly</p> <p>10 who hired Dr. Hofeller.</p> <p>11 Q. Do you know who made the decision to hire Tom</p> <p>12 Hofeller as the map drawer for the 2011 cycle?</p> <p>13 A. To the best of my knowledge, Senator Tillis had</p> <p>14 already started the wheels in motion before I</p> <p>15 was named chair.</p> <p>16 And forgive me, for the record, he is</p> <p>17 now senator. I should have referred to him as</p> <p>18 Speaker Tillis. My apologies.</p> <p>19 Q. But you had met Dr. Hofeller previously,</p> <p>20 correct?</p> <p>21 A. I had met Dr. Hofeller once before. I believe</p> <p>22 it was in 2009. I attended a meeting of the</p> <p>23 Republican National Committee and Dr. Hofeller</p> <p>24 was one of the presenters. He spoke about</p> <p>25 redistricting.</p> <p style="text-align: right;">16</p>

<p>1 At the time I held North Carolina seat 2 on the RNC's redistricting committee. I don't 3 recall Dr. Hofeller's presentation in great 4 detail. I do recall, like everything else the 5 RNC does, it was you need to get ready for this, 6 you need to be able to raise money for this, you 7 need to be able to hire good people to do this, 8 you need to take this seriously, largely the 9 same kind of stuff that they always do. 10 Q. How did they explain the importance of those 11 preparations? 12 A. Well, they just reiterated that redistricting is 13 a once-in-a-decade project that many states 14 don't gear up for and have to kind of reinvent 15 the wheel every time, if you will. They talked 16 about just being prepared. 17 I do recall, of course, that there was 18 talk that it was widely believed that the other 19 side, the Democratic Party, had controlled the 20 redistricting process for a long time and that 21 there would possibly be opportunities to weaken 22 that iron hand that the Democrats held on in 23 most of the states at that point. 24 Q. And did you have an understanding at that 25 time -- at that time of the importance of</p> <p style="text-align: right;">17</p>	<p>1 Q. And that was the only RNC redistricting 2 committee meeting that you attended? 3 A. That I recall, yes, sir. 4 Q. Where was that meeting? 5 A. I don't remember. The RNC will pick a city 6 somewhere in the U.S. and we're expected to fly 7 into it and to participate. I was trying to 8 remember because I anticipated you were going to 9 ask me that question. I cannot remember where 10 that meeting was. I do think it was -- they 11 only meet -- they only meet four times a year, 12 so I'm pretty sure it was the winter meeting 13 which is held in January, but I'm not certain of 14 that. 15 Q. But you believe it was 2009? 16 A. It was either '09 or '10, yes, sir. 17 Q. And you're certain that Dr. Hofeller presented 18 at that conference? 19 A. Yes, sir. 20 Q. Are you aware of an organization -- at the time 21 of the 2011 congressional plan being drafted, 22 were you aware of an organization called the 23 Republican State Leadership Committee? 24 A. No, sir. 25 Q. Were you aware of a national Republican program</p> <p style="text-align: right;">19</p>
<p>1 controlling a state legislative chamber to 2 control the redistricting process? 3 A. Yes. 4 Q. And the North Carolina House was controlled by 5 the Democratic Party prior to the 2010 election, 6 correct? 7 A. The control had gone back and forth as far as 8 the partisan balance. 9 Q. Immediately prior to the -- 10 A. Yes, sir, that's correct. 11 Q. And after the 2010 election, beginning in 2011, 12 the Republican Party took control of the 13 North Carolina House, correct? 14 A. Yes, sir. 15 Q. And they had control of both the North Carolina 16 House and the North Carolina Senate? 17 A. The Republican Party registered members were the 18 majority in both chambers. 19 Q. So your involvement in the Republican National 20 Committee -- Redistricting Committee, did that 21 predate your -- based on the date that you just 22 said, did that predate your chairmanship? 23 A. Yes. That would have been -- the one meeting I 24 attended in '09 was before I was named chairman 25 in 2011.</p> <p style="text-align: right;">18</p>	<p>1 called Operation REDMAP? 2 A. No, sir. 3 Q. I'm going to turn to what was previously marked 4 as Deposition Exhibit 9. 5 A. Thank you, sir. 6 MR. THORPE: I have additional copies 7 if folks need. 8 MR. FARR: I've got mine. 9 BY MR. THORPE: 10 Q. Are you familiar with this document? 11 A. I heard it discussed in a prior deposition, but 12 I had never seen it before the deposition was 13 taken two days ago. 14 Q. Based on that earlier discussion, can you 15 identify this document as a letter from the 16 chief executive officer of the Republican State 17 Leadership Committee to legislative leaders? 18 A. Based on the prior deposition I can. I will 19 point out that I don't see any letterhead on 20 this, but I would agree I think that's fair, 21 yes, sir. 22 Q. Do you recall whether you received this letter? 23 A. I do not recall receiving this and do not 24 believe that I did. 25 Q. But you have no way of being sure that you did</p> <p style="text-align: right;">20</p>

<p>1 not receive this letter?</p> <p>2 A. That's correct.</p> <p>3 Q. Were you aware at the time that Dr. Hofeller</p> <p>4 began working for North Carolina on the 2011</p> <p>5 redistricting that Dr. Hofeller also worked for</p> <p>6 the Republican State Leadership Committee?</p> <p>7 A. I was not.</p> <p>8 Q. Were you aware that Dr. Hofeller was working on</p> <p>9 redistricting issues outside of North Carolina?</p> <p>10 A. Yes, I was.</p> <p>11 Q. And what did you understand his work to entail?</p> <p>12 A. I knew that Dr. Hofeller was involved in other</p> <p>13 states. I would have to make an assumption that</p> <p>14 he was drawing maps. The reason I knew he was</p> <p>15 involved in other states is we would often have</p> <p>16 to schedule the times that we could meet with</p> <p>17 him when he was going to be in North Carolina</p> <p>18 and not in another state.</p> <p>19 Q. And for his work in North Carolina,</p> <p>20 Dr. Hofeller, as a technical matter, was hired</p> <p>21 by the Ogletree firm, correct?</p> <p>22 A. I believe that to be correct, yes, sir.</p> <p>23 Q. And the State hired the Ogletree firm?</p> <p>24 A. Yes, sir, that's correct.</p> <p>25 Q. But you had direct communications with</p> <p style="text-align: right;">21</p>	<p>1 specifically with Dr. Hofeller at the time the</p> <p>2 maps were being drawn.</p> <p>3 Q. Did you have discussions with anyone at the time</p> <p>4 of -- anyone other than counsel at the time the</p> <p>5 2011 maps were being drafted about the expected</p> <p>6 partisan performance of the plan?</p> <p>7 MR. FARR: Anyone other than other</p> <p>8 legislators who haven't waived their legislative</p> <p>9 privilege.</p> <p>10 THE WITNESS: I'm trying to recall. I</p> <p>11 want to answer your question as fully as I can.</p> <p>12 I've been deposed on this a couple of times. I</p> <p>13 don't remember who all I may have spoken to.</p> <p>14 At some point or other I'm sure that I</p> <p>15 did speak with Representative Patrick McHenry.</p> <p>16 We are college friends. I don't think he asked</p> <p>17 anything specific. I think he was more curious.</p> <p>18 BY MR. THORPE:</p> <p>19 Q. In what district does Representative McHenry</p> <p>20 represent?</p> <p>21 A. I believe it's the 10th of North Carolina.</p> <p>22 Q. Do you recall discussing with Representative</p> <p>23 McHenry the expected changes to the 10th</p> <p>24 district of North Carolina?</p> <p>25 A. I probably did.</p> <p style="text-align: right;">23</p>
<p>1 Dr. Hofeller regarding the 2011 plan, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And in those communications, you provided</p> <p>4 instructions to Dr. Hofeller as to the criteria</p> <p>5 under which he should draw the 2011 plan,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Those instructions were not in written form,</p> <p>9 though, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Did you communicate any instructions to</p> <p>12 Dr. Hofeller regarding the criteria for 2011 in</p> <p>13 writing?</p> <p>14 A. I don't believe so.</p> <p>15 Q. What were your instructions to Dr. Hofeller in</p> <p>16 drafting the 2011 plan?</p> <p>17 A. I wanted to prove that we could navigate the</p> <p>18 myriad of legal court of opinions and statutory</p> <p>19 requirements and pass a plan that complied with</p> <p>20 the law.</p> <p>21 Q. Did you discuss with Dr. Hofeller at the time of</p> <p>22 the 2011 plan being drafted the expected</p> <p>23 partisan performance of the districts he was</p> <p>24 drawing?</p> <p>25 A. I don't recall that that was discussed</p> <p style="text-align: right;">22</p>	<p>1 Q. In advance of the maps being enacted.</p> <p>2 A. In advance of the maps being enacted, not only</p> <p>3 did I talk to Representative McHenry, but</p> <p>4 Senator Rucho and I made an effort to reach out</p> <p>5 to most of the members of Congress that we had</p> <p>6 any kind of relationship with. He knew more of</p> <p>7 them than I did, frankly, but, you know, we did</p> <p>8 seek their input and advice, but I would really</p> <p>9 be hard-pressed to remember the specific</p> <p>10 conversations.</p> <p>11 Q. Did you reach out to Democratic members of</p> <p>12 Congress as well?</p> <p>13 A. Yes.</p> <p>14 Q. Which Democratic members of Congress do you</p> <p>15 remember reaching out to?</p> <p>16 A. The only Democratic member that I met with was</p> <p>17 Representative Butterfield. That was -- I met</p> <p>18 with him in Raleigh in SENATOR Rucho's</p> <p>19 conference room. I did not meet with any other</p> <p>20 Democratic member of Congress.</p> <p>21 Q. Did you provide any instruction to Dr. Hofeller</p> <p>22 for the 2011 plan that partisan advantage should</p> <p>23 be a criteria under which the plan would be</p> <p>24 drawn?</p> <p>25 A. I don't recall giving that specific criteria.</p> <p style="text-align: right;">24</p>

<p>1 Q. Do you recall any discussion with Senator Rucho, 2 Dr. Hofeller or any legislative staff about the 3 use of partisan advantage as a criteria -- 4 criterion for enacting a plan?</p> <p>5 A. I don't recall any specific discussions. I 6 believe that partisan considerations have 7 historically been a traditional redistricting 8 principle, and so I'm confident that at some 9 point those -- we did discuss partisan 10 ramifications or possibly partisan likely 11 outcomes of the districts that were going to be 12 drawn.</p> <p>13 Q. And on what basis would you assess those 14 outcomes?</p> <p>15 A. I think we would have looked at historical 16 vote -- votes that had been cast and try to use 17 that as a predictor of future elections.</p> <p>18 Q. And on what basis did you rely on past election 19 results for that purpose?</p> <p>20 A. I'm sorry, I don't understand your question.</p> <p>21 Q. For what reason did you rely on past election 22 results as a predictor of possible future 23 election results?</p> <p>24 A. The nature of redistricting is a political 25 undertaking. There are numerous laws and court</p> <p style="text-align: right;">25</p>	<p>1 performance of those maps?</p> <p>2 A. I believe in 2011 I did look at the historic 3 election trends and felt pretty confident that 4 there were districts that would give Republicans 5 an opportunity to be competitive.</p> <p>6 Q. Let me ask about that. When you say give 7 Republicans an opportunity to be competitive, 8 what metric do you apply to that?</p> <p>9 A. So again, you have to go back to the principles 10 that we were trying to operate under, 11 one-person, one-vote, but obviously you can draw 12 lines to accomplish that in multiple ways.</p> <p>13 We did apply a partisan lens on the 14 past election results, and that was a factor in 15 creating some of the districts that we felt 16 would better give the Republicans an opportunity 17 to elect candidates, where in the past the map 18 makers had made different decisions and, 19 frankly, grouped different groups of people with 20 a different expected outcome.</p> <p>21 Q. And I just want to understand the mechanics of 22 how you came to expect that about a particular 23 district.</p> <p>24 So you were presented with a statewide 25 map by Dr. Hofeller, correct?</p> <p style="text-align: right;">27</p>
<p>1 decisions that impact the ability of map drawers 2 to create a legal document. We attempted to 3 understand all of those and apply them.</p> <p>4 But to be candid, when you apply all 5 the rules that are there, there are sometimes 6 some discretionary decisions that could be made, 7 and I've been open and candid with folks that 8 when it gets to that point and all the other 9 thresholds have been met -- we're talking about 10 2011 -- that I would often view those decisions 11 through a partisan lens.</p> <p>12 Q. And so the partisan considerations that you just 13 discussed you would put in the category of those 14 discretionary decisions, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. At the time of the 2011 plan, do you recall the 17 use of the specific term "partisan advantage" as 18 a criterion discussed for drawing the 19 legislative -- I'm sorry -- the congressional 20 maps?</p> <p>21 A. I don't remember if that exact terminology was 22 used in 2011.</p> <p>23 Q. In 2011, when Dr. Hofeller provided the maps for 24 the first time to you and Senator Rucho, did you 25 have any discussion of the expected partisan</p> <p style="text-align: right;">26</p>	<p>1 A. It -- it got to that point. I don't remember if 2 the first time I met with Dr. Hofeller if there 3 were 13 districts drawn.</p> <p>4 You also have to remember, very early 5 on we were hopeful we would get a 14th seat, and 6 I think we missed it like by about 15,000 people 7 or something like that. So I'm not certain that 8 I saw a complete map to start with.</p> <p>9 Q. So in advance of seeing a statewide map, you saw 10 maps of individual districts?</p> <p>11 A. I saw -- certainly I saw the current drawing of 12 the map. I know I had at least one 13 conversation -- one conversation, as I said, 14 with Representative McHenry. So certainly I saw 15 that, the current enacted plan as a whole map.</p> <p>16 I don't remember -- when you say -- 17 when you and I talk about a whole map, 18 oftentimes you -- or I tend to look at it in 19 areas that I can understand and focus on. So it 20 is entirely possible that the first time 21 Dr. Hofeller and I looked at a map he had drawn 22 all 13 seats, but I don't recall that was the 23 order that we went in.</p> <p>24 I also don't recall, frankly, getting 25 to an individual district level until we were</p> <p style="text-align: right;">28</p>

<p>1 going to go and talk to the members of Congress.</p> <p>2 Q. So part of what I'm interested in is how the</p> <p>3 maps that you looked at and the election results</p> <p>4 you've just been testifying about paired up.</p> <p>5 So for any map that you looked at, did</p> <p>6 you also have election results that showed how</p> <p>7 past elections would come out under that map?</p> <p>8 A. If I could maybe change your question just a</p> <p>9 bit. We did have the -- how the elections in</p> <p>10 the past did turn -- did turn out and could</p> <p>11 apply them to the geographic area that the</p> <p>12 districts were drawn. I think that's what</p> <p>13 you're trying to ask.</p> <p>14 Q. That's what I was trying to ask. You in fact</p> <p>15 did that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You applied the results of the past elections to</p> <p>18 the newly drawn geographic areas before the maps</p> <p>19 were fully enacted?</p> <p>20 A. That was one of the criteria that we used, yes.</p> <p>21 Q. Okay. I want to, I guess, fast forward a little</p> <p>22 bit to the 2016 plan.</p> <p>23 You have testified that you were</p> <p>24 asked -- you and Senator Rucho were asked by</p> <p>25 Senator Berger and Speaker Moore to chair a</p> <p style="text-align: right;">29</p>	<p>1 reason I worked with the press folks a little</p> <p>2 bit closer than I had in the past because I was</p> <p>3 here anyway.</p> <p>4 Q. And had you attended the trial in Harris?</p> <p>5 A. I believe I got three of the four days.</p> <p>6 Q. And I know that you were deposed in the Dixon</p> <p>7 case and the Covington case that you just</p> <p>8 mentioned.</p> <p>9 Did you offer any other sworn testimony</p> <p>10 in the Harris case?</p> <p>11 A. To the best of my knowledge, I was not called in</p> <p>12 the Harris case.</p> <p>13 Q. But you were aware of the Harris litigation as</p> <p>14 it was ongoing?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Did the Harris Court's decision surprise you?</p> <p>17 A. It did. We were -- and still are, frankly --</p> <p>18 optimistic that we followed the law and are</p> <p>19 still optimistic that ultimately the decision</p> <p>20 will be reversed by the Supreme Court, but, yes,</p> <p>21 I was personally surprised that the court ruled</p> <p>22 as it did.</p> <p>23 Q. Between the conclusion of the Harris trial and</p> <p>24 the release of the Court's opinion on</p> <p>25 February 5th, did you have any discussions with</p> <p style="text-align: right;">31</p>
<p>1 joint redistricting committee. When did that</p> <p>2 discussion take place?</p> <p>3 A. To the best of my recollection, the decision</p> <p>4 from the Harris court came out on the 5th --</p> <p>5 Q. That's correct.</p> <p>6 A. -- of February. It's kind of -- it's kind of</p> <p>7 interesting, but -- of note, Senator Rucho and I</p> <p>8 have kind of been the go-to people when it comes</p> <p>9 to -- when it comes to redistricting. It's kind</p> <p>10 of been our job to work with the Speaker and the</p> <p>11 president pro tem's press people to respond</p> <p>12 whenever the decisions come out either in our</p> <p>13 favor or against us.</p> <p>14 On the 5th of February 2016, Speaker</p> <p>15 Moore's communications person was out so I was</p> <p>16 more involved than usual with preparing our</p> <p>17 response. I remember talking to Speaker Moore</p> <p>18 on the 5th and him telling me to head up this</p> <p>19 process I think were -- was my charge from him.</p> <p>20 Q. Do you recall exactly when you learned of the</p> <p>21 Harris decision?</p> <p>22 A. It was on a Friday afternoon. It was pretty</p> <p>23 interesting. I was with Mr. Speas and Ms. Earls</p> <p>24 that day giving another deposition, so I was in</p> <p>25 Raleigh, and that's -- I think that's another</p> <p style="text-align: right;">30</p>	<p>1 Senator Rucho regarding the likely outcome in</p> <p>2 Harris?</p> <p>3 A. No.</p> <p>4 Q. In that same time period, did you have any</p> <p>5 discussions with Dr. Hofeller at all?</p> <p>6 MR. FARR: About the case?</p> <p>7 MR. THORPE: About redistricting.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. THORPE:</p> <p>10 Q. After -- so your first conversation about your</p> <p>11 obligations with regard to a contingent plan</p> <p>12 came from a conversation with Speaker Moore on</p> <p>13 the 5th, correct?</p> <p>14 A. On the 5th is when I began to try and understand</p> <p>15 what the Harris court had ordered us to do, what</p> <p>16 the parameters around what we were ordered to do</p> <p>17 were and, well, to be frank, if we were actually</p> <p>18 going to have to do it because it was my intent</p> <p>19 that we should try to ask the Court not to</p> <p>20 require this.</p> <p>21 Q. And you testified that you were told to take</p> <p>22 charge of this process. What was that going to</p> <p>23 entail?</p> <p>24 A. The -- as we operate in two different courts,</p> <p>25 the court of jurisprudence and the court of</p> <p style="text-align: right;">32</p>

<p>1 public opinion, the first task that I had was to 2 get a response out that was credited to Senator 3 Rucho and to me. My process to do that is we 4 write the message that we want to get out. A 5 lot of times the press people will massage it 6 for different messaging reasons, and generally I 7 speak -- I have one of our attorneys review it 8 to make sure we're not saying something we're 9 not supposed to. We're always very careful to 10 express our displeasure without trying to offend 11 the Court.</p> <p>12 Q. When you jointly author documents with Senator 13 Rucho, how do you share those documents as 14 they're being drafted?</p> <p>15 A. Sometimes we literally are sitting in front of a 16 laptop that either a person on my staff or, more 17 likely, one of the press staff is using. There 18 are times when we have to call Senator Rucho or 19 the staff has to call me and read it and I say 20 it sounds okay.</p> <p>21 You're probably asking is it ever 22 e-mailed back and forth; that has probably 23 occurred. I don't remember if it occurred on 24 the 5th or not because, again, I was in Raleigh.</p> <p>25 Q. Do you keep either electronic or printed drafts</p> <p style="text-align: right;">33</p>	<p>1 they're still in either the "sent" file or some 2 file on my computer.</p> <p>3 Q. So as to those sorts of documents, you would 4 e-mail them, for example, to the press office?</p> <p>5 A. So I think that's a two-part question. The 6 finished document is always e-mailed out to the 7 press. The emerging document is sometimes 8 edited and approved via e-mail. It's sometimes 9 done because we're both in the room. It's 10 sometimes done one of us in the room, one of us 11 on the phone.</p> <p>12 So just to be clear, yes, the finished 13 document is always e-mailed. The developing 14 document is sometimes.</p> <p>15 Q. And just to reiterate the very specific 16 question, when you are editing a document, do 17 you save separate versions or drafts of the 18 document?</p> <p>19 A. I don't, no.</p> <p>20 Q. We got a little bit derailed from your response 21 to how you were to take charge of the process. 22 I think you sort of have gone through the public 23 opinion side of it. What's the other side of 24 it?</p> <p>25 A. Yes, sir. And I'm sorry if I went too far into</p> <p style="text-align: right;">35</p>
<p>1 of those documents as they're edited?</p> <p>2 A. I heard the question asked yesterday, if I may, 3 about deleting e-mails. I don't delete e-mails, 4 but I don't make any active attempt to keep 5 paper copies. In fact, often there aren't paper 6 copies.</p> <p>7 Usually it's in the case of the press 8 statement, "Are you okay with this" or "Here, we 9 wrote what you said, is this okay." And 10 sometimes I may want to change a word or two.</p> <p>11 Sometimes, frankly, Senator Rucho and I 12 don't agree on how strong or -- of how strong 13 the statement should be expressing our joy with 14 a decision or our displeasure. So we talk that 15 through and try to come to a consensus.</p> <p>16 Q. So slightly different question than the one you 17 answered about e-mail: When you actively edit a 18 statement that appears in, for example, a Word 19 document, do you do that on a computer or do you 20 do that on a printed version of the document?</p> <p>21 A. Usually on a computer.</p> <p>22 Q. And is it your practice to keep the edits that 23 you would provide to either Senator Rucho or, 24 for example, the press office?</p> <p>25 A. Only in the -- only in so much as I'm sure</p> <p style="text-align: right;">34</p>	<p>1 the other side.</p> <p>2 If I may, again, on the 5th, we learned 3 of the decision. It's kind of unfortunate when 4 those decisions come out on Friday because you 5 have to ask your staff to stay back and work and 6 you do yourself. So in addition to getting the 7 press statement out -- and I do not remember if 8 I made the phone call to our counsel or if the 9 counsel called me, but I do remember that we 10 agreed to meet to discuss and understand the 11 Harris case on Saturday the 6th at 2:00 to be 12 exact.</p> <p>13 Q. So before -- I'm going to table the scheduling 14 discussion until we've had some chance to review 15 those documents that y'all are producing today.</p> <p>16 I really want to go back to ask about 17 what the scope of your responsibility was going 18 to be as chair.</p> <p>19 A. Yes, sir. Under Speaker Tillis, he gave me 20 basically full authority to act on his behalf 21 and on behalf of the House. It was my 22 understanding from Speaker Moore that I would 23 continue to act in his stead on behalf of the 24 House. So I felt fully empowered at that time 25 to act on behalf of the House.</p> <p style="text-align: right;">36</p>

<p>1 Q. And what did you understand your role and</p> <p>2 Senator Rucho's role to be relative to the map</p> <p>3 drawer?</p> <p>4 A. Relative to the map drawer, like any bill is</p> <p>5 developed in the legislature, someone has an</p> <p>6 idea and the idea is fleshed out in some</p> <p>7 component or other and then it's run through the</p> <p>8 legislative process.</p> <p>9 So by this point -- and I say by this</p> <p>10 point because I've been dealing with</p> <p>11 redistricting since 2011 -- I felt a bit more</p> <p>12 empowered and understood my role a bit better</p> <p>13 with the map drawer and understood that the map</p> <p>14 drawer worked for me and at my instruction.</p> <p>15 Q. And when you say at your instruction, what</p> <p>16 instructions did you understand you would be</p> <p>17 providing to the map drawer once the Harris</p> <p>18 decision was released?</p> <p>19 A. The first objective was to understand what the</p> <p>20 Harris court was going to ask us to do. I</p> <p>21 actually hoped, when I heard we had lost the</p> <p>22 Harris case, that the Harris court might give us</p> <p>23 some direction or some principles to use in</p> <p>24 drawing the map.</p> <p>25 The only thing that I was able to</p> <p style="text-align: right;">37</p>	<p>1 received for the number of split VTDs and split</p> <p>2 precincts was acutely on my mind, and I asked</p> <p>3 that we do all we can not to split precincts or</p> <p>4 split VTDs.</p> <p>5 I told him that, again, one of the</p> <p>6 traditional redistricting criteria is</p> <p>7 incumbency, that we should take a look at the</p> <p>8 incumbents and at least be knowledgeable of any</p> <p>9 changes that we were going to do may or may not</p> <p>10 impact them.</p> <p>11 I felt and feel that the 2011 map is</p> <p>12 ultimately a legal document, and if you are</p> <p>13 going to consider the incumbency of the members,</p> <p>14 part of that consideration includes the</p> <p>15 partisan -- I apologize, I don't know the</p> <p>16 correct word. Part of it considering incumbency</p> <p>17 is how they are registered to vote politically,</p> <p>18 if they're a Democrat or a Republican.</p> <p>19 And at this moment, those are the ones</p> <p>20 that I recall that we discussed.</p> <p>21 Q. So that is when you hired Dr. Hofeller to be the</p> <p>22 map drawer for the 2016 map, correct?</p> <p>23 A. I did.</p> <p>24 Q. And so the instructions that you just recounted</p> <p>25 come from -- and we'll get to the timeline --</p> <p style="text-align: right;">39</p>
<p>1 garner from the Harris decision is that that</p> <p>2 Court said that we had not established a pattern</p> <p>3 of racially polarized voting in the state which</p> <p>4 means that we should not consider race in</p> <p>5 drawing -- drawing districts.</p> <p>6 The Court also wrote that they did not</p> <p>7 like the serp -- I believe the word was</p> <p>8 serpentine nature of the shape of the 12th</p> <p>9 congressional district.</p> <p>10 So my first job was to try to</p> <p>11 understand what the Harris court wanted us to</p> <p>12 do. Maybe what I learned instead is what they</p> <p>13 didn't want us to do, which was to consider race</p> <p>14 and they didn't like the shape of the 12th.</p> <p>15 Q. And from that review of the Harris court</p> <p>16 decision, what instructions did you determine</p> <p>17 you needed to give to the map maker?</p> <p>18 A. That race should not be considered in drawing</p> <p>19 the map; that the shape of the 12th district</p> <p>20 needed to change; that the traditional</p> <p>21 redistricting principles of one-person, one-vote</p> <p>22 would need to be honored; that traditional</p> <p>23 redistricting principles such as compactness</p> <p>24 should be followed; that -- to be candid with</p> <p>25 you, since 2011, the level of criticism we</p> <p style="text-align: right;">38</p>	<p>1 the first conversation that you had with</p> <p>2 Dr. Hofeller regarding the criteria you would</p> <p>3 use for the 2016 map, correct?</p> <p>4 A. As best I recall, yes.</p> <p>5 Q. Now, you've just discussed incumbency as a</p> <p>6 traditional redistricting criteria. Is it your</p> <p>7 testimony that the partisan affiliation of an</p> <p>8 incumbent is a traditional redistricting</p> <p>9 criteria?</p> <p>10 A. It's my understanding that incumbency itself is,</p> <p>11 and if you're going to consider incumbency, you</p> <p>12 have to consider the incumbent and that would</p> <p>13 mean that their partisan affiliation would be a</p> <p>14 part of that to that end.</p> <p>15 Q. On what basis did you determine the other what</p> <p>16 you have termed traditional redistricting</p> <p>17 criteria?</p> <p>18 A. It probably goes without saying that I'm not an</p> <p>19 attorney and I've never studied the law as you</p> <p>20 have and many of the folks in this room have. I</p> <p>21 have learned a lot, and I've tried to read the</p> <p>22 various cases, especially those that apply to</p> <p>23 North Carolina.</p> <p>24 We had developed the legislator's</p> <p>25 redistricting guide in 2011, and you simply</p> <p style="text-align: right;">40</p>

<p>1 begin to learn certain things are a part of the</p> <p>2 redistricting process, and I can't say there was</p> <p>3 any one moment where lightening came down from</p> <p>4 the mountain and I was exposed to what</p> <p>5 redistricting criteria are.</p> <p>6 I would just say that we're all the sum</p> <p>7 of our parts, and I was attempting to convey</p> <p>8 traditional principles as I had understood them.</p> <p>9 Q. And one of the reasons that you felt traditional</p> <p>10 redistricting principles were important for the</p> <p>11 2016 criteria was for the purpose of having the</p> <p>12 plan approved by the Harris court, correct?</p> <p>13 A. Yes.</p> <p>14 MR. THORPE: Do you want to take a</p> <p>15 break, Tom?</p> <p>16 MR. FARR: Sure.</p> <p>17 THE VIDEOGRAPHER: Off record at</p> <p>18 10:27 a.m.</p> <p>19 (Brief Recess.)</p> <p>20 THE VIDEOGRAPHER: On record at</p> <p>21 10:41 a.m.</p> <p>22 (WHEREUPON, Plaintiffs' Exhibit 39 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. THORPE:</p> <p>25 Q. I've asked the court reporter to mark what's now</p> <p style="text-align: right;">41</p>	<p>1 assume the offices of Ogletree Deakins, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Who was in attendance at that meeting?</p> <p>4 A. I was there. Brent Woodcox was there. The</p> <p>5 Ogletree counsel was there. I don't remember if</p> <p>6 the Attorney General counsel was there or not.</p> <p>7 And I believe that to be it.</p> <p>8 Q. Were any other legislators at that meeting?</p> <p>9 A. Senator Rucho was on the phone, but he was not</p> <p>10 in the room, although his presence is always</p> <p>11 felt.</p> <p>12 Q. And did Dr. Hofeller attend that meeting?</p> <p>13 A. I don't remember if he did or not.</p> <p>14 Q. Had Dr. Hofeller been -- had you decided that</p> <p>15 Dr. Hofeller would be hired for the 2016 plan by</p> <p>16 the time this meeting occurred?</p> <p>17 A. No. I made that decision at about that same</p> <p>18 time. The first decision -- I don't know how</p> <p>19 much I'm supposed -- I wanted to fight and</p> <p>20 wanted to appeal, so that was the first thing we</p> <p>21 discussed.</p> <p>22 MR. FARR: Okay, we're not going to</p> <p>23 talk about what was discussed at that meeting</p> <p>24 with counsel.</p> <p>25 THE WITNESS: Yes, sir.</p> <p style="text-align: right;">43</p>
<p>1 in front of you as Exhibit 39. Can you identify</p> <p>2 this document, Representative Lewis?</p> <p>3 A. Yes, sir. This is my calendar from February 6th</p> <p>4 through, I guess, February 19th showing most of</p> <p>5 the redistricting stuff that I did that week.</p> <p>6 Q. And just to clarify your last answer,</p> <p>7 Representative Lewis, if you could look at the</p> <p>8 last page of the document.</p> <p>9 MR. STRACH: Somebody copied this --</p> <p>10 the 5th should be the first page and the 19th</p> <p>11 should be the last page.</p> <p>12 BY MR. THORPE:</p> <p>13 Q. It's the 5th through the 19th?</p> <p>14 A. Yes, sir. I apologize.</p> <p>15 Q. It's my understanding that the redactions in</p> <p>16 this document are nonresponsive in that they are</p> <p>17 not in any way related to redistricting; is that</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And it's my understanding if there is a page</p> <p>21 missing, it's because there were no responsive</p> <p>22 entries from that day, correct?</p> <p>23 A. Yes.</p> <p>24 Q. This list has a 2:00 p.m. entry on Saturday,</p> <p>25 February 6th, a redistricting meeting at I</p> <p style="text-align: right;">42</p>	<p>1 BY MR. THORPE:</p> <p>2 Q. When did you make the decision to hire</p> <p>3 Dr. Hofeller?</p> <p>4 A. On Saturday, February 6th.</p> <p>5 Q. Okay. And Dr. Hofeller was in fact hired on</p> <p>6 February 6th?</p> <p>7 A. I sought his counsel. I was acting under what I</p> <p>8 believed to be my authority to do so. I think</p> <p>9 we later clarified in the redistricting</p> <p>10 committee that I did in fact have that</p> <p>11 authority, but in my mind, yes.</p> <p>12 Q. And other than conversations that involved</p> <p>13 counsel, did you have a conversation with</p> <p>14 Dr. Hofeller on Saturday, February 6th?</p> <p>15 A. I believe we -- I do believe we spoke by phone</p> <p>16 either on the 6th or the 7th to talk about the</p> <p>17 Harris response.</p> <p>18 Q. Was Senator Rucho also on that call?</p> <p>19 A. I don't believe he was on that call.</p> <p>20 Q. And what was the substance of that telephone</p> <p>21 call?</p> <p>22 A. We have to draw a map to comply with the Harris</p> <p>23 decision. We need to get together and talk</p> <p>24 about it.</p> <p>25 Q. Did you discuss at that time any of the</p> <p style="text-align: right;">44</p>

<p>1 instructions that we were talking about before</p> <p>2 we took our break?</p> <p>3 A. I don't remember if we talked about any of the</p> <p>4 drawing criteria at that point other than what I</p> <p>5 understood the Harris court said they didn't</p> <p>6 like.</p> <p>7 Q. At that time you did not provide Dr. Hofeller</p> <p>8 with instructions regarding other criteria to be</p> <p>9 used in drawing these maps?</p> <p>10 A. I do not believe I did.</p> <p>11 Q. Was it your understanding that Dr. Hofeller</p> <p>12 would begin working on maps immediately?</p> <p>13 A. I didn't have that understanding. It's my</p> <p>14 belief that what we did was arrange to meet on</p> <p>15 Monday the 9th.</p> <p>16 Q. So just to clarify, Monday is February 8th. The</p> <p>17 9th indicates that you have a meeting with</p> <p>18 Hofeller at 4:00 p.m. Did you first meet on</p> <p>19 Tuesday, February 9th?</p> <p>20 A. We did. I'm sorry. Yep.</p> <p>21 Q. On Monday, February 8th, did you have any</p> <p>22 communication with Dr. Hofeller?</p> <p>23 A. To be clear, I don't remember if it was</p> <p>24 Saturday, Sunday or Monday that I called him and</p> <p>25 said we need to get together.</p> <p>45</p>	<p>1 A. I don't remember if I came to Raleigh on Monday</p> <p>2 the 8th or not. I certainly returned on Tuesday</p> <p>3 the 9th.</p> <p>4 Q. And did you meet with Senator Rucho before you</p> <p>5 met with Dr. Hofeller?</p> <p>6 A. I don't recall that Senator Rucho and I met face</p> <p>7 to face. I know that we spoke on the phone at</p> <p>8 some point that Monday or Tuesday, but I don't</p> <p>9 know that we actually met face to face before</p> <p>10 going to see -- before I went to see</p> <p>11 Dr. Hofeller.</p> <p>12 Q. And you believe you had one phone call with</p> <p>13 Senator Rucho in between the meeting at Ogletree</p> <p>14 on Saturday and the meeting with Hofeller on</p> <p>15 Tuesday, correct?</p> <p>16 A. The best I can recall.</p> <p>17 Q. What was the substance of that conversation?</p> <p>18 A. We talked briefly, as best I can recall, about</p> <p>19 our hope that a stay could be issued and that we</p> <p>20 could appeal the case, and then we talked</p> <p>21 about -- that I was ready to hire Hofeller to</p> <p>22 prepare maps that we could review. And to the</p> <p>23 best of my recollection, he didn't have any</p> <p>24 disagreement with that.</p> <p>25 Q. So you decided to hire Dr. Hofeller?</p> <p>47</p>
<p>1 Q. Beyond that phone call in any of those three</p> <p>2 days, did you have any additional communication</p> <p>3 with Dr. Hofeller?</p> <p>4 A. No.</p> <p>5 Q. Are you personally aware of whether Senator</p> <p>6 Rucho had any communication with Dr. Hofeller</p> <p>7 during that time?</p> <p>8 A. I am not.</p> <p>9 Q. Did you communicate with Senator Rucho during</p> <p>10 that time?</p> <p>11 A. Senator Rucho and I spoke -- we probably spoke</p> <p>12 by phone on Monday. I know we didn't speak on</p> <p>13 Sunday because, to be candid, it was the</p> <p>14 Super Bowl.</p> <p>15 MR. FARR: Some things have higher</p> <p>16 priority.</p> <p>17 BY MR. THORPE:</p> <p>18 Q. Where were you over the weekend, Representative?</p> <p>19 A. Well, I was supposed to be home preparing for</p> <p>20 the Super Bowl party I talked my wife in to;</p> <p>21 instead, I was at Ogletree to then return home</p> <p>22 to rush for our Super Bowl party which was the</p> <p>23 next day.</p> <p>24 Q. And did you return to Raleigh on Monday or on</p> <p>25 Tuesday?</p> <p>46</p>	<p>1 A. Yes.</p> <p>2 Q. And Senator Rucho agreed?</p> <p>3 A. I want to say yes because I think he did, but I</p> <p>4 don't know if I can -- he didn't disagree with</p> <p>5 it.</p> <p>6 Q. And Dr. Hofeller in fact had been hired on that</p> <p>7 Saturday the 6th, correct?</p> <p>8 MR. FARR: Objection to form.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: I think I spoke to</p> <p>11 Hofeller on the 6th. I don't know that we</p> <p>12 actually in terms of offer an exception and</p> <p>13 consideration, I don't know that we did that on</p> <p>14 the 6th, but I'm pretty sure I communicated to</p> <p>15 him that I wanted him to get involved and we</p> <p>16 arranged to meet and talk about the maps at some</p> <p>17 point.</p> <p>18 BY MR. THORPE:</p> <p>19 Q. Was it your understanding that Dr. Hofeller</p> <p>20 would begin work on the 2016 plan prior to your</p> <p>21 meeting on Tuesday the 9th?</p> <p>22 A. No.</p> <p>23 Q. And you did not communicate to him prior to</p> <p>24 Tuesday the 9th any instructions regarding the</p> <p>25 plan except as you earlier testified what the</p> <p>48</p>

<p>1 Harris court did not want, correct?</p> <p>2 A. To the best of my memory, yes.</p> <p>3 Q. And on Tuesday, February 9th, you met at</p> <p>4 Dr. Hofeller's home?</p> <p>5 A. Yes.</p> <p>6 Q. Did you arrive with Senator Rucho?</p> <p>7 A. No. We didn't -- we didn't ride together.</p> <p>8 Q. And you had no face-to-face contact with Senator</p> <p>9 Rucho in between the Harris decision and the</p> <p>10 beginning of that meeting with Dr. Hofeller,</p> <p>11 correct?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. So let's talk about the substance of that</p> <p>14 meeting with Dr. Hofeller. How did it begin?</p> <p>15 A. Obviously, Dr. Hofeller and I have worked</p> <p>16 together since 2011, so you exchange the normal</p> <p>17 pleasantries. We then began to talk about the</p> <p>18 Harris Court's decision. If I recall correctly,</p> <p>19 we talked about the 12th first because we had</p> <p>20 drawn the 12th in 2011 as a strongly Democratic</p> <p>21 district because it had been adjudicated so</p> <p>22 long. We talked about, you know, what do you do</p> <p>23 with that.</p> <p>24 One of the goals that I had, frankly,</p> <p>25 because the criticism from 2011 was to keep</p> <p style="text-align: right;">49</p>	<p>1 A. Yes.</p> <p>2 Q. Did you consider the strength of the revised</p> <p>3 12th as a Democratic district?</p> <p>4 A. No, we didn't. I don't recall that we looked at</p> <p>5 was it as -- was it as Democratic as it was</p> <p>6 before. I don't think we did that.</p> <p>7 Q. And you're speaking now about in that initial</p> <p>8 conversation?</p> <p>9 A. Yes, sir.</p> <p>10 Q. After you talked about the 12th, what was the</p> <p>11 next topic related to the revised maps?</p> <p>12 A. Well, we tried to go back and -- the shape of</p> <p>13 the 1st district in the 2011 map we believed --</p> <p>14 which, again, we believed to be constitutional,</p> <p>15 but that -- if -- if we were not required -- in</p> <p>16 fact, we were prohibited by the Harris court of</p> <p>17 drawing a Voting Rights district, then the next</p> <p>18 priority would be how do you redraw the 1st not</p> <p>19 relying on race. Because, of course, as you</p> <p>20 change the lines of one district, every district</p> <p>21 that touched it would change as well.</p> <p>22 Q. And who provided the answer to that question?</p> <p>23 A. As best I can recall, I think we simply started</p> <p>24 working -- Dr. Hofeller started working, to be</p> <p>25 clear, with staying in the same basic geographic</p> <p style="text-align: right;">51</p>
<p>1 counties whole and doing away with the 12th,</p> <p>2 which is what the judge asked us to do, would</p> <p>3 help keep a lot of counties whole. So I</p> <p>4 remember being pretty excited about that.</p> <p>5 Q. And you felt that doing away with the 12th was a</p> <p>6 requirement of the Harris court?</p> <p>7 A. That was my understanding.</p> <p>8 Q. Did Dr. Hofeller or Senator Rucho express any</p> <p>9 additional goals or approaches regarding</p> <p>10 changing the 12th district?</p> <p>11 A. I remember only vaguely the conversation. I</p> <p>12 think we realized that we were going to have to</p> <p>13 collapse the district either into Mecklenburg or</p> <p>14 into Guilford. Over half the population was</p> <p>15 already in Mecklenburg, as I recall, and it</p> <p>16 seemed to make a nice looking congressional</p> <p>17 district to collapse it into the 12th. So that</p> <p>18 may have been one -- that may have been the</p> <p>19 first one we drew.</p> <p>20 Q. Did you discuss the likely partisan outcome of a</p> <p>21 district drawn entirely into Mecklenburg county?</p> <p>22 A. I believe that was probably one of the things</p> <p>23 that we looked at, yes.</p> <p>24 Q. So you considered whether the revised 12th would</p> <p>25 remain a Democratic district?</p> <p style="text-align: right;">50</p>	<p>1 area. We did consider Congressman Butterfield's</p> <p>2 incumbency. We were able to keep more counties</p> <p>3 whole.</p> <p>4 Q. To be clear, I'm only asking about this first</p> <p>5 conversation that you're having about the 1st</p> <p>6 district in this first meeting.</p> <p>7 A. Right. Those were the -- those were the basic</p> <p>8 goals that we talked about.</p> <p>9 Q. And at this time neither you nor Senator Rucho</p> <p>10 had yet presented Dr. Hofeller with the</p> <p>11 instructions again that we talked about just</p> <p>12 before the break?</p> <p>13 A. It was at this meeting that we talked about</p> <p>14 those instructions.</p> <p>15 Q. And did those instructions come at the beginning</p> <p>16 of the meeting or did you begin by talking about</p> <p>17 the issues that you've just discussed based on</p> <p>18 the Harris court opinion?</p> <p>19 A. We talked about the Harris court opinion first,</p> <p>20 and when -- then you say, well, how are you</p> <p>21 going to try to address it and you have to kind</p> <p>22 of outline general goals or objectives, which is</p> <p>23 what we did.</p> <p>24 Q. And you provided those general goals or</p> <p>25 objectives to Dr. Hofeller?</p> <p style="text-align: right;">52</p>

<p>1 A. Yes.</p> <p>2 Q. And did those come from you or did those come</p> <p>3 from Senator Rucho in the course of that</p> <p>4 conversation?</p> <p>5 A. Mostly from me.</p> <p>6 Q. And did Dr. Hofeller at that time provide his</p> <p>7 input on those goals?</p> <p>8 A. Dr. Hofeller, in every experience I've had with</p> <p>9 him, has tried to be accommodating to what he's</p> <p>10 asked to do. So like many good people,</p> <p>11 salespeople, if you asked him can this be done,</p> <p>12 the answer is, yes, we'll figure out how to do</p> <p>13 it. So that's the nature of the conversation</p> <p>14 that I recall.</p> <p>15 Q. So in that conversation, you provided a list of</p> <p>16 objectives and Dr. Hofeller indicated he could</p> <p>17 meet those objectives?</p> <p>18 A. I think we talked about the objectives. I don't</p> <p>19 believe -- I don't think I enumerated a list</p> <p>20 per se.</p> <p>21 Q. In that conversation, did you communicate to</p> <p>22 Dr. Hofeller that race could not be considered</p> <p>23 in drawing the maps?</p> <p>24 A. Yes.</p> <p>25 Q. In that first conversation, did you communicate</p> <p style="text-align: right;">53</p>	<p>1 possible?</p> <p>2 A. Yes.</p> <p>3 Q. Did you communicate that Dr. Hofeller should</p> <p>4 minimize the number of split voter districts or</p> <p>5 precincts?</p> <p>6 A. Yes.</p> <p>7 Q. Did you communicate that Dr. Hofeller should</p> <p>8 protect incumbents?</p> <p>9 A. I think the words we used were we had to</p> <p>10 consider the incumbents as, you know, they're</p> <p>11 people, they're currently serving members of</p> <p>12 Congress. And so I don't remember that I said</p> <p>13 at all cost we had to protect the people, but I</p> <p>14 did think -- I'm certain that was one of the</p> <p>15 criteria that we talked about.</p> <p>16 And if I may, one of the reasons I'm</p> <p>17 certain about that is Dr. Hofeller was saying</p> <p>18 that he was not sure he had the residency</p> <p>19 addresses of the incumbents, which is one of the</p> <p>20 things I think I provided to him and messed that</p> <p>21 up too, which I'm sure you'll get to that.</p> <p>22 Q. Did you discuss the partisan affiliation of</p> <p>23 incumbents in discussing considering those</p> <p>24 incumbents' residences?</p> <p>25 A. No.</p> <p style="text-align: right;">55</p>
<p>1 that the serpentine nature of the 12th district</p> <p>2 needed to be corrected?</p> <p>3 A. Yes.</p> <p>4 Q. In that conversation, did you communicate that</p> <p>5 one person, one vote requirements needed to be</p> <p>6 met?</p> <p>7 A. Yes.</p> <p>8 Q. In that conversation, did you communicate that</p> <p>9 compactness would be a requirement?</p> <p>10 A. I remember we talked about -- and I'm trying to</p> <p>11 answer your question. I don't remember if I</p> <p>12 used the word "compactness." I remember that we</p> <p>13 talked about trying to keep counties whole.</p> <p>14 You see, here's where my lack of</p> <p>15 knowledge of the law gets me in trouble</p> <p>16 sometimes. The compactness indicator that I</p> <p>17 believe the Stephenson decision in the</p> <p>18 legislative districts came up with about trying</p> <p>19 to keep counties whole was a way to judge</p> <p>20 compactness, and so I don't know if I used the</p> <p>21 word compactness, but I remember saying, you</p> <p>22 know, let's keep as many counties whole as we</p> <p>23 can.</p> <p>24 Q. You communicated that Dr. Hofeller, in drawing</p> <p>25 the 2016 map, should as many counties whole as</p> <p style="text-align: right;">54</p>	<p>1 Q. Did you otherwise discuss the partisan balance</p> <p>2 of North Carolina's congressional delegation?</p> <p>3 A. I was certainly aware of the registration of all</p> <p>4 the members of Congress that we had at the time,</p> <p>5 so to the extent that the incumbents are</p> <p>6 affiliated with one party or the other, yes, we</p> <p>7 talked about that.</p> <p>8 Q. You discussed that the North Carolina</p> <p>9 congressional delegation at the time you were</p> <p>10 having the conversation had 10 Republican</p> <p>11 members and 3 Democratic members?</p> <p>12 A. I believe so, yes.</p> <p>13 Q. Did you discuss individual districts, members</p> <p>14 from individual districts?</p> <p>15 A. I don't remember that we discussed individual</p> <p>16 members. At that point it was just kind of --</p> <p>17 when you talk about the incumbents, it's just</p> <p>18 kind of understood that you're talking about</p> <p>19 them as a collective being the members of</p> <p>20 Congress and as individuals.</p> <p>21 Q. Did Dr. Hofeller express to you at that time any</p> <p>22 concerns about the ability to draw districts</p> <p>23 that would keep the incumbents elected in 2014</p> <p>24 in their districts?</p> <p>25 A. I don't know that that was immediately discussed</p> <p style="text-align: right;">56</p>

<p>1 that day. I know we talked about if we could</p> <p>2 all avoid -- we didn't want to place two</p> <p>3 incumbent members in the same seat. I know we</p> <p>4 talked about that.</p> <p>5 I don't remember if we talked about --</p> <p>6 and I'm sorry, I'll try harder. Would you ask</p> <p>7 me that again.</p> <p>8 Q. Did you discuss -- did Dr. Hofeller express any</p> <p>9 concern about any incumbents under revised maps</p> <p>10 being able to hold their seat?</p> <p>11 A. Oh, I don't remember if he brought it out or I</p> <p>12 brought it out that you don't actually have to</p> <p>13 live in the district in which you run, so we did</p> <p>14 talk about that, but I don't think we talked</p> <p>15 about any concern on that day that he had about</p> <p>16 not being able to not double bunk -- which is</p> <p>17 terminology for two members in the same seat. I</p> <p>18 don't think we talked -- I don't think he</p> <p>19 expressed concern on that day.</p> <p>20 Q. That is the extent of the criteria that you or</p> <p>21 the instructions that you gave to Dr. Hofeller</p> <p>22 regarding the districts on that day?</p> <p>23 A. It may could go without saying, but I probably</p> <p>24 should say it. We did reaffirm that it was the</p> <p>25 2010 census that we had to use because that was</p> <p style="text-align: right;">57</p>	<p>1 briefly -- there was at least one time that</p> <p>2 Senator Rucho went to Dr. Hofeller's house that</p> <p>3 I was not with him and I think it was that day</p> <p>4 because I knew Hofeller was going to have to</p> <p>5 leave pretty early.</p> <p>6 Q. And when you say that day, what day do you mean?</p> <p>7 A. As best I recall, it was probably the Wednesday,</p> <p>8 February 10th, that Dr. Hofeller had a medical</p> <p>9 issue to attend to, and I believe his -- if I</p> <p>10 remember correctly, his appointment was at 11:00</p> <p>11 or something and so I didn't see a need to go</p> <p>12 over there that morning, but I think Senator</p> <p>13 Rucho may have gone on his own that morning</p> <p>14 without me.</p> <p>15 Q. But you only participated in the meeting that</p> <p>16 occurred that day after Dr. Hofeller's</p> <p>17 appointment?</p> <p>18 A. Yes.</p> <p>19 Q. And so that meeting occurred on Wednesday,</p> <p>20 February 10th?</p> <p>21 A. Yes.</p> <p>22 Q. What was the substance of that meeting?</p> <p>23 A. We reviewed the criteria we talked about before.</p> <p>24 By that point I believe there were some</p> <p>25 preliminary maps to look at.</p> <p style="text-align: right;">59</p>
<p>1 the map we were being ordered to redraw, but I</p> <p>2 believe that to be the extent of our</p> <p>3 conversation.</p> <p>4 Q. Did Dr. Hofeller offer any additional criteria</p> <p>5 that may be used in drawing the 2011 -- I'm</p> <p>6 sorry -- the 2016 maps during that conversation?</p> <p>7 A. Not that I recall.</p> <p>8 Q. And consistent with your earlier testimony, it</p> <p>9 is your responsibility to provide the criteria</p> <p>10 and Dr. Hofeller's responsibility to implement</p> <p>11 the criteria, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, Senator Rucho testified yesterday that one</p> <p>14 of the meetings with Dr. Hofeller was</p> <p>15 interrupted by an appointment that he had. You</p> <p>16 have on your calendar for Wednesday,</p> <p>17 February 10th, an additional meeting with</p> <p>18 Dr. Hofeller. Were either of those meetings</p> <p>19 segmented? Meaning did one occur -- did you</p> <p>20 have two meetings in one day at some point?</p> <p>21 A. I remember the day that Dr. Hofeller had to</p> <p>22 attend to a medical situation. I believe that I</p> <p>23 waited until after he returned to go to his</p> <p>24 home.</p> <p>25 I think Senator Rucho may have gone</p> <p style="text-align: right;">58</p>	<p>1 Q. Just -- I apologize. Just to clarify an earlier</p> <p>2 point, the meeting that you had on Tuesday,</p> <p>3 February 9th, the criteria that you provided you</p> <p>4 provided orally, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. You provided no document indicating those</p> <p>7 criteria?</p> <p>8 A. No, sir.</p> <p>9 Q. Did you take any notes to that meeting regarding</p> <p>10 the criteria?</p> <p>11 A. No, sir.</p> <p>12 Q. Did you take any notes to the meeting at all?</p> <p>13 A. No, sir.</p> <p>14 Q. Did Dr. Hofeller take notes regarding the</p> <p>15 criteria during the meeting?</p> <p>16 A. I don't know.</p> <p>17 Q. So, I'm sorry, for the meeting on Wednesday,</p> <p>18 February 10th, you said that Dr. Hofeller had</p> <p>19 begun creating maps?</p> <p>20 A. Yes. To the best of my knowledge, I looked at</p> <p>21 some -- and I said maps. I looked at some</p> <p>22 images on the screen. Yeah, I do think there</p> <p>23 were some there that day.</p> <p>24 Q. And to your knowledge, did Dr. Hofeller begin</p> <p>25 working on those maps before your Tuesday</p> <p style="text-align: right;">60</p>

<p>1 meeting or after your Tuesday meeting?</p> <p>2 A. I believe it would have been after, but -- you</p> <p>3 know, one thing I learned doing redistricting</p> <p>4 the first time around in 2011, a lot of people</p> <p>5 just do this as a hobby and for fun. So I don't</p> <p>6 know what Dr. Hofeller may or may not have</p> <p>7 already done.</p> <p>8 Q. And what maps did you look at on Wednesday,</p> <p>9 February 10th?</p> <p>10 A. I don't remember. I remember -- I don't</p> <p>11 remember exactly what map. I remember thinking</p> <p>12 that I was pleased with how the 12th looked, all</p> <p>13 being contained within Mecklenburg county. I</p> <p>14 can't recall exactly how some of the districts</p> <p>15 looked. Many of them still look basically the</p> <p>16 same as they did in the 2011 map. I noticed</p> <p>17 that.</p> <p>18 I do recall one conversation that day</p> <p>19 he and I had when we did the 2011 maps. We felt</p> <p>20 it was an important thing to let the major</p> <p>21 metropolitan areas in the state have more than</p> <p>22 one member of Congress. We thought that would</p> <p>23 boost their ability to get things done in</p> <p>24 Washington.</p> <p>25 Going more with keeping counties whole,</p> <p style="text-align: right;">61</p>	<p>1 can zoom in or zoom out or whatever you want to</p> <p>2 do, so I do think I looked at a couple of</p> <p>3 different areas where counties could be divided</p> <p>4 or would be divided.</p> <p>5 Q. And presumably when you're looking at those</p> <p>6 lines, you are looking at voter districts on</p> <p>7 either side of those lines, correct?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. And what information did you have about those</p> <p>10 voter districts?</p> <p>11 A. Most of the time -- and I say most of the time,</p> <p>12 I'll clarify that in a minute. Nearly every</p> <p>13 time I looked at the maps, it was the political</p> <p>14 data from the Tillis-Hagan race in '14 and, of</p> <p>15 course, there's like a little running ticker</p> <p>16 thing, if you will, that shows how many people</p> <p>17 live in the districts. Those things I believe</p> <p>18 were what were on the screen most of the time.</p> <p>19 Q. And when you say on the screen, do you mean on</p> <p>20 the screen during that meeting with Hofeller?</p> <p>21 A. Yes.</p> <p>22 Q. And to confirm, the Tillis-Hagan 2014 Senate</p> <p>23 race was the race for which election results</p> <p>24 were displayed?</p> <p>25 A. That's the one I understood the most. There</p> <p style="text-align: right;">63</p>
<p>1 I kind of walked away from that belief and we</p> <p>2 spent a lot of time talking about if there was a</p> <p>3 way to keep Asheville whole because we had</p> <p>4 gotten some push back on the way it was drawn.</p> <p>5 So we talked about that. I remember that</p> <p>6 consumed a lot of that conversation.</p> <p>7 Q. When you say push back on the way that it was</p> <p>8 drawn, you mean the way that it was drawn in the</p> <p>9 2011 map?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Ultimately you determined it was not possible to</p> <p>12 keep Asheville whole?</p> <p>13 A. Well, we looked at a couple of different</p> <p>14 scenarios, but in every scenario we came up</p> <p>15 with, Buncombe was going to wind of being split.</p> <p>16 Buncombe is where Asheville is. So in the end,</p> <p>17 I made the decision that the squeeze wasn't</p> <p>18 worth the effort to do. We kept it largely the</p> <p>19 same as it was in the 2011 plan.</p> <p>20 Q. And where counties are split, how would you</p> <p>21 look -- when you looked at Dr. Hofeller's</p> <p>22 computer or the state computer, how would you</p> <p>23 look at those splits within a county?</p> <p>24 A. On Mapitude, it's -- it's kind of like a more</p> <p>25 advanced version of Google Maps. I mean, you</p> <p style="text-align: right;">62</p>	<p>1 was -- there was another instance where</p> <p>2 Dr. Hofeller was using another combination of</p> <p>3 political races. I didn't -- in my mind the</p> <p>4 closest political race with equally matched</p> <p>5 candidates who spent about the same amount of</p> <p>6 money was the 2014 U.S. Senate race. That's the</p> <p>7 one I chose to look at.</p> <p>8 Q. You chose to look at that race?</p> <p>9 A. I did.</p> <p>10 Q. You requested the election results from that</p> <p>11 race?</p> <p>12 A. I did.</p> <p>13 Q. To view the performance of individual voter</p> <p>14 districts?</p> <p>15 A. That's correct.</p> <p>16 Q. In maps you were evaluating?</p> <p>17 A. Yes, sir, that's correct.</p> <p>18 Q. Did you specifically look at Buncombe county?</p> <p>19 A. I looked specifically at Buncombe county several</p> <p>20 times, and I don't remember if we even made any</p> <p>21 changes to it in the contingent map. We</p> <p>22 certainly -- we certainly tried.</p> <p>23 Again, some of the feedback we received</p> <p>24 over the four years, people felt like maybe you</p> <p>25 could keep Buncombe county whole. I couldn't</p> <p style="text-align: right;">64</p>

<p>1 ever figure out a way to do that.</p> <p>2 Q. Which congressional districts are on either side</p> <p>3 of the county split in Buncombe county?</p> <p>4 A. 10 and 11.</p> <p>5 Q. Both of those districts are held by Republicans,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Prior to the 2011 redistricting, Asheville had a</p> <p>9 Democratic representative, correct?</p> <p>10 A. I don't believe so, but I don't remember.</p> <p>11 Charles Taylor was a long-time Republican</p> <p>12 congressman from that area. I don't remember if</p> <p>13 he still held the seat or had lost it. I'm</p> <p>14 sorry, I just --</p> <p>15 Q. That's okay.</p> <p>16 A. I've been to his events. That's why I remember</p> <p>17 his name. I'm sorry.</p> <p>18 Q. The maps that you looked at in that meeting with</p> <p>19 Hofeller, those were maps that had all 13</p> <p>20 districts?</p> <p>21 A. Again, you could zoom out and see 13 or you</p> <p>22 could zoom in and see one.</p> <p>23 Q. Dr. Hofeller testified on Tuesday that in</p> <p>24 building these maps he would begin, for example,</p> <p>25 with just a map for District 1 to look at how to</p> <p>65</p>	<p>1 don't remember -- and I will say I don't</p> <p>2 remember what I had at 5:30 that day, but I</p> <p>3 don't think I made it. I think it was pretty</p> <p>4 long.</p> <p>5 Q. And because I failed to ask earlier, how long</p> <p>6 did the meeting on Tuesday, February 9th last?</p> <p>7 A. It was probably two hours or so. It wasn't</p> <p>8 as -- it wasn't as long.</p> <p>9 Q. Did you provide any additional instructions</p> <p>10 regarding the criteria for drawing the 2016 maps</p> <p>11 to Dr. Hofeller at the Wednesday, February 10th</p> <p>12 meeting?</p> <p>13 A. Not that I recall.</p> <p>14 Q. What instructions did you give to Dr. Hofeller</p> <p>15 regarding the work that you should do going</p> <p>16 forward?</p> <p>17 A. I don't remember how far along he was. I think</p> <p>18 we were still trying to keep Buncombe county</p> <p>19 whole and Asheville whole at that point, but I</p> <p>20 don't remember. So I don't think I gave any</p> <p>21 additional instructions other than, you know,</p> <p>22 perhaps keep working on -- on getting a map</p> <p>23 prepared.</p> <p>24 Q. Did you give him any deadlines regarding a map?</p> <p>25 A. I did not give him a deadline, I don't believe a</p> <p>67</p>
<p>1 do District 1 differently.</p> <p>2 Did you look at any maps that had a</p> <p>3 single district?</p> <p>4 A. I remember looking at the 12th all contained</p> <p>5 within Mecklenburg, I'm certain of that.</p> <p>6 Q. When looking at the 12th district, did you look</p> <p>7 at it given the results of the Tillis-Hagan race</p> <p>8 that you testified previously?</p> <p>9 A. Yes.</p> <p>10 Q. What did you observe about the partisan</p> <p>11 performance of the revised or potentially</p> <p>12 revised 12th district under that race?</p> <p>13 A. I remember, to the best of my knowledge, that</p> <p>14 Senator Hagan had carried that area, but I don't</p> <p>15 remember the numbers.</p> <p>16 Q. Other than looking at maps on the screen with</p> <p>17 Dr. Hofeller, what else occurred at that second</p> <p>18 meeting?</p> <p>19 A. I don't -- I don't recall. We looked at maps,</p> <p>20 looked at -- or I say maps, looked at scenarios</p> <p>21 perhaps is a better way to say it, but I don't</p> <p>22 remember that we did any -- I don't think we did</p> <p>23 anything else.</p> <p>24 Q. How long did that meeting last?</p> <p>25 A. If I remember correctly, it was pretty long. I</p> <p>66</p>	<p>1 hard deadline. He knew that we were under a</p> <p>2 deadline of -- set by the court and we would</p> <p>3 need at least two or three days in the</p> <p>4 legislature. So I think it was we all were</p> <p>5 working with the understanding that we have</p> <p>6 something ready to go early that next week.</p> <p>7 Q. So did you have any other meetings related to</p> <p>8 redistricting on Wednesday, February 10th?</p> <p>9 A. No.</p> <p>10 Q. Did you have a follow-up meeting after the</p> <p>11 meeting with Hofeller with Senator Rucho?</p> <p>12 A. I didn't meet with Senator Rucho after, no.</p> <p>13 Q. Did Senator Rucho, to your knowledge, provide</p> <p>14 any additional instructions regarding criteria</p> <p>15 for the 2016 plan to Dr. Hofeller on Wednesday,</p> <p>16 February 10th?</p> <p>17 A. To my knowledge he didn't.</p> <p>18 Q. On Thursday, February 11th at 9:00 a.m., there's</p> <p>19 a redistricting process meeting on your</p> <p>20 schedule. What is that meeting?</p> <p>21 A. Yes, sir. So one of the duties of being the</p> <p>22 chair of the committee is to sort of map out how</p> <p>23 things are going to go, and it's -- it was at</p> <p>24 that day -- it was in it says in Jackson's</p> <p>25 conference room. That's Senator Brent Jackson.</p> <p>68</p>

<p>1 He just has a nicer conference room than I had 2 access to. 3 I remember that we mapped out -- so -- 4 MR. FARR: Let me stop you for a 5 second. Were there attorneys present for that 6 meeting? 7 THE WITNESS: I don't remember, Tom. 8 MR. FARR: Okay. 9 THE WITNESS: So all I remember us 10 doing at that meeting, though, is talking about 11 if there's a hard stop that the map has to be 12 enacted by to submit to the Court, the General 13 Assembly itself would need a certain amount of 14 time to go through the House and the Senate 15 process. We wanted to hold a public hearing. I 16 think we talked about those kind of logistical 17 things. I don't remember there -- 18 BY MR. THORPE: 19 Q. Who do you remember being present at that 20 meeting? 21 A. I am almost certain that Senator Rucho was 22 there. I think Senator Rucho's LA was there, 23 Will Verbiest. My assistant was there because, 24 again, this was logistical stuff. 25 Q. What is your assistant's name?</p> <p style="text-align: right;">69</p>	<p>1 Q. During this period, were you reporting on the 2 progress of redistricting to Senator Berger and 3 Speaker Moore? 4 A. I don't recall having a conversation with 5 Speaker Moore. I know I didn't have a 6 conversation with Senator Berger. 7 Q. So the only conversation that you had with 8 Senator Moore up to this point is the 9 conversation on the 5th when you learned of the 10 Harris decision? 11 A. Yes. 12 Q. And I understand where this is going, but to tee 13 this up properly, in that conversation with 14 Speaker Moore, did you receive any instructions 15 as to criteria that should be followed for the 16 2016 plan? 17 MR. FARR: And since he can't waive 18 Speaker Moore's legislative privilege, he can't 19 answer that question. 20 BY MR. THORPE: 21 Q. The other meetings that you had on February 11th 22 are listed as being related to the U.S. Census. 23 Did those have any bearing on the 2016 24 redistricting or was the 2016 redistricting plan 25 at all discussed at either of those meetings?</p> <p style="text-align: right;">71</p>
<p>1 A. His name is Mark Coggins. 2 Brent Woodcox was there. He's the 3 legal counsel to redistricting, so maybe that 4 was the lawyer that was there. 5 And I believe -- now that you've said 6 lawyers, I believe Bart Goodson, who's the 7 counsel to Speaker Moore, was there as well, but 8 I'm not certain. 9 Q. I'm not going to ask any questions about the 10 conversation that happened at that meeting, but 11 after that meeting, were there deadlines set for 12 the various events that would occur over the 13 course of the next week? 14 A. There were -- there were goals set, if you will. 15 I don't know that we -- let me try that answer 16 again. 17 So when you have a lot of moving parts, 18 you've got two legislative bodies that aren't 19 even in session at the time. I was tasked with 20 managing the redistricting process for the 21 House, but I don't have the authority to call 22 the House back, for instance. So there were 23 goals set, and I think we agreed to meet the 24 next day, and that would have probably been when 25 the hard deadlines were set.</p> <p style="text-align: right;">70</p>	<p>1 A. No, sir. 2 Q. So those are left on your schedule as responsive 3 because the census relates to redistricting? 4 A. Yes, sir. 5 Q. Did you have any other meetings with Senator 6 Rucho on Thursday, February 11th? 7 A. Not that I recall. 8 Q. Do you recall any phone conversations to Senator 9 Rucho? 10 A. I don't recall. 11 Q. On Friday the only thing on the schedule is a 12 planning and managing process meeting. You've 13 testified that it is likely that the hard 14 deadlines for the following week were set at 15 that meeting. Do you recall who was at that 16 meeting? 17 A. I remember that we definitely included some of 18 the central staff, which is the General Assembly 19 term for the permanent staff at the building, 20 because they handled the logistics of setting up 21 the public hearing and also of the -- preparing 22 for the committee to meet the next week. 23 So I believe Erika Churchill was there. 24 Dan Frye was there. They may have had some of 25 their staff there, but I don't remember.</p> <p style="text-align: right;">72</p>

<p>1 Q. Was the schedule for the following week publicly 2 announced that day?</p> <p>3 A. Certainly the public -- to the best of my 4 knowledge, the public hearing was announced. I 5 don't remember -- I think we announced the whole 6 thing, but I don't remember that exactly.</p> <p>7 Q. Now, between your meeting with Dr. Hofeller on 8 Wednesday afternoon and the end of Friday, 9 February 12th, did you have any further 10 communication with Dr. Hofeller?</p> <p>11 A. Yes.</p> <p>12 Q. What was the substance of that communication?</p> <p>13 A. I did look at the map again. I don't -- I'm 14 embarrassed it's not on the calendar. I don't 15 remember exactly when it was that I talked with 16 him.</p> <p>17 Q. Meaning you went to his house? You had another 18 in-person meeting with him?</p> <p>19 A. Yes. Yes. Apparently I didn't record it, but, 20 yeah, I met with Dr. Hofeller again before 21 the -- before the public hearing process began 22 on the 15th.</p> <p>23 Q. But you don't know what day that meeting 24 occurred?</p> <p>25 A. I know it was not Sunday the 14th. So it would</p> <p style="text-align: right;">73</p>	<p>1 A. Well, again, if you're trying to keep counties 2 whole, we couldn't figure out any way to keep 3 Buncombe whole. So if you've got to split it, 4 the existing split that was understood by the 5 voters seemed to be a good place to do it. So 6 that would be one of the 13 splits that we have.</p> <p>7 Q. Now, you refer -- have referred a couple of 8 times to the existing splits or the existing 9 map. Am I correct in understanding that the 10 2011 districts served as the base for the maps 11 that Dr. Hofeller was working on?</p> <p>12 A. That may be a technical question beyond my 13 ability to answer, but I'd like to try.</p> <p>14 So I always referred to the 2011 map as 15 the enacted map or the benchmark map and then 16 the 2016 map as the contingent map because it 17 was contingent upon the Harris court approving 18 it. So if that's not the correct terminology, 19 I'm just trying to tell you that's how I used 20 it.</p> <p>21 Q. But when you reviewed districts with 22 Dr. Hofeller, the starting point for those maps 23 was what you just referred to as the benchmark 24 map which was the 2011 districts, correct?</p> <p>25 A. One of the considerations that we had was to</p> <p style="text-align: right;">75</p>
<p>1 have either been the afternoon of Friday the 2 12th or Saturday the 13th. I can't remember.</p> <p>3 Q. Did Senator Rucho also attend that meeting?</p> <p>4 A. No, sir.</p> <p>5 Q. That was a meeting just between you and 6 Dr. Hofeller?</p> <p>7 A. That's right.</p> <p>8 Q. Is there anyone else who could identify when 9 that meeting occurred?</p> <p>10 A. Dr. Hofeller may have had the notes on it.</p> <p>11 Q. Were there notes taken at that meeting?</p> <p>12 A. Not in any form other than Dr. Hofeller may 13 have -- may have a calendar entry. I don't 14 know.</p> <p>15 Q. And what did you review with Dr. Hofeller at 16 that meeting?</p> <p>17 A. We looked at other -- different scenarios, 18 again, trying to figure out what the ultimate 19 map would look like. I don't remember 20 specifically -- I think it was about this point 21 that I gave up on trying to keep Asheville 22 whole, but other than that, I don't remember -- 23 it was not -- this one was not a particularly 24 long one.</p> <p>25 Q. Why did you give up on that goal?</p> <p style="text-align: right;">74</p>	<p>1 change as few -- you know, have as little change 2 as we could.</p> <p>3 Q. I'm going to push for a yes-or-no answer on the 4 initial question which is --</p> <p>5 A. I'm sorry.</p> <p>6 Q. When you looked at maps with Dr. Hofeller, the 7 comparison points when you looked at a new 8 district was the 2011 map which you refer to as 9 the benchmark map, correct?</p> <p>10 A. So I'm going to answer yes, but I'd like to 11 qualify it only in that I in my mind knew what 12 the 2011 map was largely. I don't know that we 13 ever put them side by side. I just -- so when 14 you have lived with something as long as I have, 15 the 2011 map, you just know their certain 16 features of it.</p> <p>17 Q. When you say you don't know whether you put them 18 side by side, you earlier testified that you 19 were looking, for example, at the existing 20 county line split for Buncombe county. So you 21 were reviewing 2011 maps in making 22 determinations about the 2016 map, correct?</p> <p>23 A. Yes. The 2011 map was also on Dr. Hofeller's 24 computer and he could look at it as he wanted 25 to.</p> <p style="text-align: right;">76</p>

<p>1 Q. And as Dr. Hofeller built new districts for the</p> <p>2 2016 map, did he begin with the 2011 map to your</p> <p>3 knowledge?</p> <p>4 A. I don't -- I don't know that he did. Some of</p> <p>5 the earlier versions of the map would lead me to</p> <p>6 think he did.</p> <p>7 Q. The maps that you reviewed in that meeting on</p> <p>8 either Friday or Saturday are near-final</p> <p>9 versions of the 2016 map?</p> <p>10 A. Yes.</p> <p>11 Q. So --</p> <p>12 A. And I may clarify that, it's near the final</p> <p>13 version of what I intended to submit. In other</p> <p>14 words, you can never presume the legislature is</p> <p>15 going to pass what you present. So it was near</p> <p>16 my final form. I'm not implying that it was</p> <p>17 absolutely done.</p> <p>18 Q. It is the near-final version of what you</p> <p>19 intended to submit to the legislature?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the map that you submitted to the</p> <p>22 legislature was ultimately adopted with a minor</p> <p>23 distinction for an incumbency issue, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. At either that meeting or in any conversation</p> <p style="text-align: right;">77</p>	<p>1 meeting.</p> <p>2 Q. Did you instruct him to supply the legislature</p> <p>3 with those maps?</p> <p>4 A. I did, but I didn't know exactly how to go about</p> <p>5 doing that. That's one of the things that we</p> <p>6 established early next week that, you know,</p> <p>7 they're going to set up a computer up for him</p> <p>8 and all that kind of stuff.</p> <p>9 I don't think I gave him specific</p> <p>10 instructions come on this day and do this. I</p> <p>11 don't think we had gotten quite to that point</p> <p>12 yet.</p> <p>13 Q. But you did not instruct him to make any</p> <p>14 additional changes or revisions to the map you</p> <p>15 saw at that meeting?</p> <p>16 A. No, sir, not that I can recall, I didn't.</p> <p>17 Q. So at that meeting your understanding was that</p> <p>18 the map that you had just viewed with</p> <p>19 Dr. Hofeller would be the map that he submitted</p> <p>20 to the legislature?</p> <p>21 A. Yes, sir.</p> <p>22 Q. On Sunday, February 14, 2016, there's a</p> <p>23 conference call listed at 5:00 p.m. What does</p> <p>24 that entry refer to?</p> <p>25 A. We scheduled multiple public hearings to take</p> <p style="text-align: right;">79</p>
<p>1 that happened since Tuesday, February 9th, did</p> <p>2 you at any time provide Dr. Hofeller with any</p> <p>3 additional instructions regarding criteria to be</p> <p>4 used in developing the map?</p> <p>5 A. I don't immediately recall that I did.</p> <p>6 Q. Did you communicate to Dr. Hofeller any metric</p> <p>7 or approach to balancing the different criteria?</p> <p>8 A. Other than the one-person, one-vote which we</p> <p>9 believe is sacrosanct, no.</p> <p>10 Q. Did Dr. Hofeller communicate to you how he</p> <p>11 intended to balance the criteria?</p> <p>12 A. I don't believe we discussed it in those terms.</p> <p>13 Q. Did Senator Rucho, to your knowledge,</p> <p>14 communicate to Dr. Hofeller any additional</p> <p>15 instructions regarding the criteria to be used</p> <p>16 in developing the map between your meeting on</p> <p>17 Tuesday and the time that you reviewed the</p> <p>18 near-final maps on either Friday or Saturday?</p> <p>19 A. I don't know.</p> <p>20 Q. What instructions did you give to Dr. Hofeller</p> <p>21 regarding any additional changes to the maps</p> <p>22 after that meeting?</p> <p>23 A. I don't -- regarding what Dr. Hofeller was</p> <p>24 drawing on his computer, I don't think I gave</p> <p>25 him any additional instructions after that</p> <p style="text-align: right;">78</p>	<p>1 place the next day. Some of the legislative</p> <p>2 members that were going to preside and assist --</p> <p>3 you need to have a member at each one of these</p> <p>4 sites. They had not taken part in the 2011</p> <p>5 process.</p> <p>6 So we just talked through the technical</p> <p>7 side. So the way it will work is the presiding</p> <p>8 chair in Raleigh will say we're going to the</p> <p>9 Asheville site now or go to the federal site now</p> <p>10 and then you're in charge and you recognize</p> <p>11 whoever is signed up to speak. And we talked</p> <p>12 about that.</p> <p>13 Frankly, we talked about if there --</p> <p>14 because we have to, we talked about there would</p> <p>15 be general -- there would be a sergeant-at-arms</p> <p>16 and there would be General Assembly police and</p> <p>17 that the most -- most of these sites were at the</p> <p>18 community college, they were very helpful, and</p> <p>19 the community college had provided us sort of an</p> <p>20 emergency backup plan.</p> <p>21 Q. So the folks on this call are principally</p> <p>22 legislators?</p> <p>23 A. Yes.</p> <p>24 Q. Did they have an opportunity to ask questions</p> <p>25 about the redistricting process that was ongoing</p> <p style="text-align: right;">80</p>

<p>1 beyond the technical aspects that you just</p> <p>2 expressed about the public hearing?</p> <p>3 A. I don't recall that anyone tried to ask one. I</p> <p>4 don't recall. It was Valentine's Day.</p> <p>5 Q. You don't remember any substantive discussion of</p> <p>6 the approach that you and Senator Rucho were</p> <p>7 taking to the redistricting plan or any</p> <p>8 discussion of the criteria in that conference</p> <p>9 call?</p> <p>10 A. No.</p> <p>11 Q. So that public hearing occurs on Monday,</p> <p>12 February 15, 2016, as you state it occurs both</p> <p>13 in Raleigh and around the state via</p> <p>14 videoconference. You attend that hearing?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Senator Rucho attends that hearing?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Does Dr. Hofeller attend that hearing?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you communicate to Dr. Hofeller that he</p> <p>21 should not attend that hearing?</p> <p>22 A. No, sir.</p> <p>23 Q. Who was aware at the time that that hearing</p> <p>24 occurred that Dr. Hofeller was the map drawer?</p> <p>25 A. I was -- I was aware that Dr. Hofeller was</p> <p style="text-align: right;">81</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Did you write that document?</p> <p>3 A. The document was written at my direction but</p> <p>4 largely by Brent Woodcox. The wording in there</p> <p>5 is a little more his style than mine, but these</p> <p>6 were the criteria that I asked him to write.</p> <p>7 Q. To your knowledge, are there multiple versions</p> <p>8 of that document, different drafts of that</p> <p>9 document?</p> <p>10 A. I don't know. And again, I know this is on the</p> <p>11 record from yesterday, but we drafted these as</p> <p>12 individual criteria. And so the document which</p> <p>13 is Exhibit 24 is a compilation of the adopted</p> <p>14 criteria, but this is not actually how the</p> <p>15 document looked until after the committee met.</p> <p>16 Q. So just to clarify, you presented the -- and</p> <p>17 we're going to go through this in more detail a</p> <p>18 little bit more, but you presented the criteria</p> <p>19 individually. In reviewing the criteria before</p> <p>20 you presented them, you were viewing each</p> <p>21 criteria on a separate page or in a separate</p> <p>22 document?</p> <p>23 A. I don't remember if it was just a page break or</p> <p>24 if it was individual. I don't know.</p> <p>25 As far as -- I know when I was</p> <p style="text-align: right;">83</p>
<p>1 drawing a map for me and for Senator Rucho. I</p> <p>2 don't know that anybody else knew that Hofeller</p> <p>3 was drawing our map, and I don't know who else</p> <p>4 was working on maps on their own.</p> <p>5 Q. You had not communicated that information to</p> <p>6 members of the committee, for example?</p> <p>7 A. I don't believe I had, no, sir.</p> <p>8 Q. Had you communicated that information to Speaker</p> <p>9 Moore?</p> <p>10 A. I am certain at some point that I told him that</p> <p>11 I was working with Hofeller, yes.</p> <p>12 Q. Had you communicated that information to Senator</p> <p>13 Berger?</p> <p>14 A. I did not speak to Senator Berger.</p> <p>15 Q. At the time of the public hearing, did you have</p> <p>16 any copy or physical document that reflected the</p> <p>17 map that you had viewed on Dr. Hofeller's</p> <p>18 computer on Saturday -- or on Friday?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you have the document that ultimately became</p> <p>21 the adopted criteria already prepared?</p> <p>22 A. I certainly had thought about it. I don't</p> <p>23 remember if it was in its final form or not.</p> <p>24 Q. Okay. Let's talk about, for a second, the</p> <p>25 drafting of that document.</p> <p style="text-align: right;">82</p>	<p>1 presenting them, it was one criteria on the page</p> <p>2 at a time.</p> <p>3 Q. I understand. So your -- when did you first see</p> <p>4 any document with written criteria?</p> <p>5 A. I don't remember exactly when first started</p> <p>6 working on this. May have tasked Brent to do</p> <p>7 it, and I say may because I don't remember, at</p> <p>8 the meeting that was held the prior week on</p> <p>9 either the 11th or --</p> <p>10 Q. 12th possibly?</p> <p>11 A. I don't recall at what point I asked Brent to</p> <p>12 help me compose this, but...</p> <p>13 Q. You requested that Brent Woodcox draft a</p> <p>14 document reflecting written criteria for the</p> <p>15 2016 plan, correct?</p> <p>16 A. I'm sorry. Would you repeat the question.</p> <p>17 Q. You requested that Brent Woodcox draft a</p> <p>18 document reflecting the intended criteria for</p> <p>19 the 2016 plan, correct?</p> <p>20 A. Yes, with the caveat that it was my intended</p> <p>21 criteria, not necessarily the committee's.</p> <p>22 Q. Understood.</p> <p>23 When did you make that request?</p> <p>24 A. I don't remember exactly when I asked Brent to</p> <p>25 do it.</p> <p style="text-align: right;">84</p>

<p>1 Q. How did you communicate your intended criteria 2 to Brent Woodcox? 3 A. To the best of my knowledge, we were at the 4 legislative building in my office and we talked 5 about it. I don't believe we were off site. 6 That's to the best of my knowledge. And I don't 7 remember at what point in this we set down in my 8 office and talked. 9 Q. What instructions did you give Brent Woodcox as 10 to what should be included in your intended 11 adopted criteria? 12 A. I asked Brent to flesh out the criteria that I 13 wanted to present to the committee, so the items 14 that are listed in 24 are what I asked Brent to 15 help me create, help me write. 16 Q. So I need to understand the substance of what 17 you communicated so that I know how he knew what 18 to include in the document. 19 A. Understand. 20 Q. What instructions did you provide him about what 21 should end up in that document? 22 A. So I don't remember the exact conversation. I'm 23 sure one of the things I said was have it 24 reflect one-person, one-vote, which he 25 translated into equal population. I'm sure that</p> <p style="text-align: right;">85</p>	<p>1 significant criticism from the 2011 map on that 2 point and, two, we felt that that would be -- I 3 knew that the judges were going to review this 4 map and they were going to look for -- to make 5 sure that we made a valid effort to comply at 6 least what they asked us to do. 7 So one of the things that I thought 8 would help if the districts were compact, if the 9 counties weren't split, if it were a 10 good-looking map. So I -- this wording is 11 largely Brent's, but he's communicating what I 12 asked him to. 13 Q. What did you communicate to Brent Woodcox about 14 incumbency as a criteria? 15 A. That incumbency was a traditional redistricting 16 principle, that we have to acknowledge that it 17 exists. 18 Q. What did you say to him specifically about the 19 2000 -- protecting incumbents from the 2011 20 maps? 21 A. Just that the incumbency would be acknowledged 22 and be considered as one of the criteria. I 23 think the ultimate language we settled on was 24 reasonable effort would be made to acknowledge 25 where the incumbents live or something like</p> <p style="text-align: right;">87</p>
<p>1 I instructed him to say that the shape of the 2 12th had to change. I'm sure I instructed him 3 that -- that the court had told us we could not 4 use race. 5 I'm sure I told him -- one of the -- I 6 don't remember if I told him this or not, but I 7 remember one of the things that one of the 8 courts had said was in drawing the 12th 9 originally as a heavily Democratic district 10 Dr. Hofeller had used the McCain-Obama numbers 11 and it seems like one of the court rulings had 12 said that was not an appropriate thing. So I 13 thought we had talked about including that in 14 the criteria as well, but the compactness we 15 talked about. Incumbency we talked about. 16 Q. What did you instruct Brent Woodcox to include 17 as regards compactness? 18 A. I tried to convey to him that we needed some 19 kind of measurable standard, like keeping 20 counties whole. I know there are political 21 scientists that can do research, but I don't 22 know how to do all that. 23 So we talked about trying to keep 24 counties whole and keeping VTDs and precincts 25 whole largely because, well, one, we had gotten</p> <p style="text-align: right;">86</p>	<p>1 that. I'm sorry, it was a long time ago. 2 Q. And you directed him to address that to 3 incumbents under the enacted plan, correct? 4 A. Yes, sir. 5 Q. Which you earlier referred to as the benchmark 6 plan, correct? 7 A. Yes, sir. 8 Q. So incumbency mattered with respect to the 2011 9 plan? 10 A. Yes, sir. 11 Q. What else did you instruct Brent Woodcox 12 regarding the criteria? 13 A. Well, we were told by the Harris court, to my 14 understanding, that we couldn't use race. So we 15 did talk about -- I think one of the things we 16 said was that race couldn't be considered per 17 the Harris court. 18 We also talked about partisan data in 19 terms of historic elections were a factor that 20 could be considered in drawing the maps. 21 Q. Did you instruct him that the criteria should 22 include understanding partisan data to construct 23 the maps? 24 A. I believe the way I had been -- I believe the 25 way that I had told Dr. Hofeller and the way</p> <p style="text-align: right;">88</p>

<p>1 that I told Brent is the only way we can get</p> <p>2 this by the court is if we use only political</p> <p>3 data as the only other identifying information</p> <p>4 because you've got to recall the Harris court --</p> <p>5 you know, we were under the order because they</p> <p>6 said we had racially gerrymandered a map.</p> <p>7 Q. I understand. What definition of political data</p> <p>8 did you provide to Brent Woodcox? You've</p> <p>9 earlier testified that you wanted to look at</p> <p>10 election returns.</p> <p>11 A. Yeah.</p> <p>12 Q. Did you specify that political data should</p> <p>13 include returns of prior elections?</p> <p>14 A. I believe I did, yes, with the exception of</p> <p>15 Obama-McCain and Obama-Romney.</p> <p>16 Q. You specified that the election returns to be</p> <p>17 used as political data for the 2016 map would be</p> <p>18 statewide elections that did not include the two</p> <p>19 presidential elections in 2008 and 2012?</p> <p>20 A. Yes, I believe that to be correct.</p> <p>21 Q. Brent Woodcox included that at your direction?</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss any weighting of the elections</p> <p>24 to be used for determining the relevance of the</p> <p>25 political data?</p> <p style="text-align: right;">89</p>	<p>1 Q. What else did you instruct Brent Woodcox?</p> <p>2 A. I don't know if he was tasked with making sure</p> <p>3 we had the court reporter or not; probably not.</p> <p>4 As counsel, he wouldn't have been tasked with</p> <p>5 that.</p> <p>6 I don't think there was --</p> <p>7 Q. More specifically, what did you instruct Brent</p> <p>8 Woodcox should be included in the adopted</p> <p>9 criteria?</p> <p>10 A. I don't think there was anything else.</p> <p>11 Q. Did you instruct Brent Woodcox that the partisan</p> <p>12 advantage criteria should be included in the</p> <p>13 adopted criteria that you presented?</p> <p>14 A. Yes.</p> <p>15 Q. What did you communicate to Brent Woodcox about</p> <p>16 the partisan advantage criteria?</p> <p>17 A. That the current registration of the members of</p> <p>18 Congress consisted of 10 Republicans and 3</p> <p>19 Democrats, and so to the extent possible, the</p> <p>20 new -- or contingent map should reflect that</p> <p>21 because, again, that was one of my goals.</p> <p>22 Q. One of your goals was to maintain the partisan</p> <p>23 balance under what you've referred to as the</p> <p>24 benchmark map, correct?</p> <p>25 MR. FARR: Objection to the form.</p> <p style="text-align: right;">91</p>
<p>1 A. Not with Brent, no.</p> <p>2 Q. Did this discussion happen before or after you</p> <p>3 reviewed maps with Dr. Hofeller looking at the</p> <p>4 Tillis-Hagan race?</p> <p>5 A. It was almost certainly before.</p> <p>6 Thank you for providing this calendar,</p> <p>7 by the way. It's actually very helpful.</p> <p>8 It would have been -- certainly would</p> <p>9 have been prior to --</p> <p>10 Q. To refresh your memory, Representative, I</p> <p>11 believe you earlier testified that you looked at</p> <p>12 the Tillis-Hagan race for Mecklenburg county</p> <p>13 when you met with Dr. Hofeller on Wednesday of</p> <p>14 that week.</p> <p>15 A. That's right.</p> <p>16 Q. This meeting with Brent Woodcox occurred after</p> <p>17 the Wednesday of that week, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. So at the time that you instructed Brent Woodcox</p> <p>20 to include partisan data, including the 2014</p> <p>21 senate election as a criteria for the 2016 map,</p> <p>22 you had already viewed a map with Dr. Hofeller</p> <p>23 that evaluated the performance of a district</p> <p>24 using that data, correct?</p> <p>25 A. Yes, sir.</p> <p style="text-align: right;">90</p>	<p>1 You can answer.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. THORPE:</p> <p>4 Q. Did you give him any instruction on the specific</p> <p>5 language to be used for the political advantage</p> <p>6 criteria?</p> <p>7 A. I don't recall giving him any specific language.</p> <p>8 That's why I was asking for his help.</p> <p>9 Q. Did you give him any instruction about including</p> <p>10 political considerations in any other criteria?</p> <p>11 A. I'm not sure I understand your question. I'm</p> <p>12 sorry.</p> <p>13 Q. Did you give him any instruction about, for</p> <p>14 example, what you earlier testified as the</p> <p>15 importance of political considerations in</p> <p>16 protecting incumbents?</p> <p>17 A. I did not give Brent any additional instructions</p> <p>18 that I can recall.</p> <p>19 MR. FARR: Ben, keep going until you're</p> <p>20 ready to stop, but can we get to a quick break</p> <p>21 time.</p> <p>22 BY MR. THORPE:</p> <p>23 Q. What direction did you give Brent Woodcox about</p> <p>24 when he should provide you with the document you</p> <p>25 requested?</p> <p style="text-align: right;">92</p>

<p>1 A. The absolute latest that it could have been done</p> <p>2 would have been Tuesday, February 16th, in time</p> <p>3 for the committee to meet. Probably I would</p> <p>4 have asked for it on Monday the 15th.</p> <p>5 Q. Did you expect to see drafts of that document</p> <p>6 before it was completed, or did you expect to</p> <p>7 receive a single document and accept that</p> <p>8 document?</p> <p>9 A. I believe I anticipated receiving drafts and</p> <p>10 adding or subtracting from them. I don't know</p> <p>11 that I actually did because I think we had to</p> <p>12 amend the -- amend the criteria once it was</p> <p>13 presented because something was left out, but I</p> <p>14 can't remember what it was at this exact moment</p> <p>15 in time.</p> <p>16 Q. So just to be very clear on this, did you</p> <p>17 receive any drafts of this criteria before you</p> <p>18 presented it to the committee on Tuesday, the</p> <p>19 following Tuesday?</p> <p>20 A. So to be absolutely clear, I'm certain that I</p> <p>21 received the language before I presented it to</p> <p>22 the committee.</p> <p>23 Q. In the form that it was presented?</p> <p>24 A. Yes. I don't remember if I received other</p> <p>25 versions of it or not.</p> <p>93</p>	<p>1 A. At Dr. Hofeller's house, yes.</p> <p>2 Q. So this meeting that occurred on Wednesday is</p> <p>3 the only meeting that you attended with Senator</p> <p>4 Rucho where you evaluated maps drawn by</p> <p>5 Dr. Hofeller, correct?</p> <p>6 A. Yes.</p> <p>7 Q. So yesterday Senator Rucho testified that in</p> <p>8 looking at maps with Dr. Hofeller there was a</p> <p>9 point where you were essentially choosing</p> <p>10 between two different maps.</p> <p>11 Do you recall that process?</p> <p>12 A. I do.</p> <p>13 Q. Do you recall what the differences were between</p> <p>14 those two maps?</p> <p>15 A. One of the maps split more counties and more</p> <p>16 VTDs than the one we ultimately decided to go</p> <p>17 forward with.</p> <p>18 Q. So what direction did you give to Dr. Hofeller</p> <p>19 as to which map to choose?</p> <p>20 A. The one that best complied with all the criteria</p> <p>21 was the one that split the fewest counties,</p> <p>22 fewest VTDs, so that was the one that we decided</p> <p>23 upon.</p> <p>24 Q. And you testified earlier that you had looked at</p> <p>25 that meeting at the election results from the</p> <p>95</p>
<p>1 Q. If you had received other versions of it</p> <p>2 previously, would they have been received by</p> <p>3 e-mail?</p> <p>4 A. With Brent, probably so.</p> <p>5 MR. THORPE: Okay, we can take a break</p> <p>6 or a lunch break.</p> <p>7 THE VIDEOGRAPHER: Off record at</p> <p>8 12:04 p.m.</p> <p>9 (Lunch Recess.)</p> <p>10 THE VIDEOGRAPHER: On record at</p> <p>11 1:13 p.m.</p> <p>12 BY MR. THORPE:</p> <p>13 Q. Representative Lewis, I want to follow up on a</p> <p>14 couple conversations that you had in that first</p> <p>15 week of the process that we were previously</p> <p>16 discussing.</p> <p>17 On Wednesday, that would be</p> <p>18 February 10th, you attended a meeting at</p> <p>19 Dr. Hofeller's home with Senator Rucho. You</p> <p>20 testified earlier that at that meeting you</p> <p>21 evaluated maps that Dr. Hofeller had worked on.</p> <p>22 A. Yes, sir, that's correct.</p> <p>23 Q. The only other meeting at which you evaluated</p> <p>24 maps with Dr. Hofeller was on either Friday or</p> <p>25 Saturday of that week, correct?</p> <p>94</p>	<p>1 Tillis-Hagan Senate election when looking at</p> <p>2 some district map.</p> <p>3 Did you look at the result of the 2014</p> <p>4 Senate election when looking at the map that you</p> <p>5 chose?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you look at the result of any other election</p> <p>8 when looking at the map that you chose?</p> <p>9 A. I did not intentionally do that. At one point</p> <p>10 there was a map up that I think Dr. Hofeller had</p> <p>11 his own formula that he was using, and I just</p> <p>12 asked for the Tillis results because I thought</p> <p>13 that was the most reliable, most frequent --</p> <p>14 most in my mind.</p> <p>15 Q. Do you know which other races went into the</p> <p>16 formula that was displayed on the screen that</p> <p>17 you saw?</p> <p>18 A. Offhand I don't.</p> <p>19 Q. And did you give Dr. Hofeller any direction as</p> <p>20 to which races should be given priority in</p> <p>21 making decisions about the map?</p> <p>22 A. No, other than not to use the presidential in</p> <p>23 '08 and '12.</p> <p>24 Q. But as between the races that were available --</p> <p>25 well, first of all, were the races that were</p> <p>96</p>

<p>1 available to Dr. Hofeller for evaluating these</p> <p>2 maps identical to the races that are in the 2016</p> <p>3 stat pack?</p> <p>4 A. Yes, sir. The one -- and to be clear, the one</p> <p>5 that was distributed to the committee by me,</p> <p>6 yes.</p> <p>7 Q. Understood. Which is 20 statewide races and</p> <p>8 excludes the 2008 and 2012 presidential</p> <p>9 elections, correct?</p> <p>10 A. I believe that to be correct.</p> <p>11 Q. And those were the only races available to</p> <p>12 Dr. Hofeller, as you just testified, were -- did</p> <p>13 you instruct him not to use any other races to</p> <p>14 which he may have had access?</p> <p>15 A. I did not.</p> <p>16 Q. As between those 20 races, did you express any</p> <p>17 preference for one race as against another in</p> <p>18 terms of its relevance?</p> <p>19 A. Again, I thought the Tillis-Hagan race was the</p> <p>20 most relevant.</p> <p>21 Q. And you communicated that to Dr. Hofeller?</p> <p>22 A. I did.</p> <p>23 Q. Did he communicate to you which races he felt</p> <p>24 were relevant?</p> <p>25 A. He probably did say which ones were in his</p> <p style="text-align: right;">97</p>	<p>1 member of Congress from your state, so I don't</p> <p>2 know that I specifically said identify their</p> <p>3 party because I knew what it was, and I assume</p> <p>4 most everybody else that serves in the General</p> <p>5 Assembly knows what political party the seated</p> <p>6 members of Congress belong to.</p> <p>7 Q. And the instruction regarding incumbency was</p> <p>8 designed to avoid placing two incumbents in the</p> <p>9 same revised district, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And was that goal achieved?</p> <p>12 A. With one exception.</p> <p>13 Q. And that exception was?</p> <p>14 A. Congressman Holding paired with Congressman</p> <p>15 Price.</p> <p>16 Q. And Congressman Holding, nonetheless, ran and</p> <p>17 won in a district where he is not resident,</p> <p>18 correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Was Senator Rucho present for the conversation</p> <p>21 with Brent Woodcox?</p> <p>22 A. No, he was not.</p> <p>23 Q. Did you make Senator Rucho aware of the</p> <p>24 conversation with Brent Woodcox?</p> <p>25 A. I don't know that Senator Rucho and I talked</p> <p style="text-align: right;">99</p>
<p>1 figuring, but I don't remember what they were.</p> <p>2 Q. Did Senator Rucho have any perspective on which</p> <p>3 of those basket of races were relevant?</p> <p>4 A. I don't -- I don't recall that he expressed much</p> <p>5 of a -- that he engaged a lot on that particular</p> <p>6 subject.</p> <p>7 Q. The second conversation that I had a few</p> <p>8 questions about was the conversation with Brent</p> <p>9 Woodcox that we were talking about right before</p> <p>10 lunch. You instructed Brent Woodcox to include</p> <p>11 an incumbency criteria in the criteria that he</p> <p>12 was to draft at your instruction.</p> <p>13 How did you define incumbency for Brent</p> <p>14 Woodcox?</p> <p>15 A. The current seated member of Congress under the</p> <p>16 2011 map.</p> <p>17 Q. Did you instruct him to include in that</p> <p>18 definition anything about that member's</p> <p>19 political party?</p> <p>20 A. I did not.</p> <p>21 Q. Did you feel it was necessary to know or</p> <p>22 identify the political party of any incumbent</p> <p>23 for the purposes of the incumbency criteria?</p> <p>24 A. I know you want a shorter answer. When you're</p> <p>25 in politics, you simply know the party of the</p> <p style="text-align: right;">98</p>	<p>1 about the conversation. I know that we talked</p> <p>2 about the criteria before it was presented to</p> <p>3 the committee.</p> <p>4 Q. You -- did you communicate to Senator Rucho that</p> <p>5 there would be written criteria that you had</p> <p>6 instructed someone to draft?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did he have the opportunity to review that</p> <p>9 criteria before it was presented to the</p> <p>10 committee?</p> <p>11 A. Yes, sir.</p> <p>12 Q. When did he have that opportunity?</p> <p>13 A. I'm certain he would have seen it -- I'm certain</p> <p>14 he would have seen it by the Monday,</p> <p>15 February 15th, meeting at 5:00. He may have</p> <p>16 seen it earlier in the day, but I don't think</p> <p>17 so. I think that's when he saw it.</p> <p>18 Q. Returning to something we were talking about</p> <p>19 before lunch, when did you first see it? And</p> <p>20 when I say "see it," I mean the document that is</p> <p>21 now Exhibit 24 -- or I'm sorry -- the document</p> <p>22 that includes all of the adopted criteria as</p> <p>23 they were presented to the joint committee.</p> <p>24 A. May I ask for clarification, sir. Are you</p> <p>25 referring to Exhibit 24 or the individual parts</p> <p style="text-align: right;">100</p>

<p>1 of Exhibit 24?</p> <p>2 Q. Either, to be honest, but the actual draft that</p> <p>3 was presented by -- drafted by and presented to</p> <p>4 you by Brent Woodcox either in a form that</p> <p>5 separated them out or in a complete form.</p> <p>6 A. Yes, sir. Certainly some time on February 15th.</p> <p>7 I do not believe I saw anything over the</p> <p>8 weekend.</p> <p>9 Q. And again, you have no memory of receiving</p> <p>10 drafts of that document?</p> <p>11 A. I do not.</p> <p>12 Q. So the only version of that document of which</p> <p>13 you're aware is the one that was presented to</p> <p>14 committee?</p> <p>15 A. Yes, sir.</p> <p>16 Q. When that document was presented to you on the</p> <p>17 15th and to Senator Rucho on the 15th, did</p> <p>18 anyone else receive a copy of that document or</p> <p>19 the information contained in that document?</p> <p>20 A. Yes. I believe the people who were present in</p> <p>21 the meeting at 5:00 p.m. all would have seen it.</p> <p>22 Q. Okay. So the meeting at 5:00 p.m. is entitled</p> <p>23 "Status Check." And who was present at that</p> <p>24 meeting?</p> <p>25 A. I was. Senator Rucho was. Brent Woodcox was.</p> <p style="text-align: right;">101</p>	<p>1 that would have needed to have been made to the</p> <p>2 map. None were discovered. I believe --</p> <p>3 Q. Who had access to the map at that time?</p> <p>4 A. Rucho and me.</p> <p>5 Q. And how did you have access to the map?</p> <p>6 A. Via Dr. Hofeller's computer.</p> <p>7 Q. So only when you were present in meeting with</p> <p>8 Dr. Hofeller did you see the map that you knew</p> <p>9 was going to be sent to the legislature?</p> <p>10 A. That's right.</p> <p>11 Q. And do you know when Senator Rucho last viewed</p> <p>12 that map?</p> <p>13 A. I don't.</p> <p>14 Q. Did Dr. Hofeller indicate to you that anyone</p> <p>15 else had come to view the map?</p> <p>16 A. I don't recall that he said that.</p> <p>17 Q. Did he indicate that -- do you know whether</p> <p>18 Senator Berger had viewed the map?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether Speaker Moore had viewed the</p> <p>21 map?</p> <p>22 A. I don't know.</p> <p>23 Q. Had Andrew Tripp viewed the map?</p> <p>24 A. I don't know.</p> <p>25 Q. Did Andrew Tripp -- what was Andrew Tripp's</p> <p style="text-align: right;">103</p>
<p>1 It says Andrew Tripp so I'm going to say Andrew</p> <p>2 Tripp was there.</p> <p>3 Q. And who is Andrew Tripp?</p> <p>4 A. Andrew Tripp is counsel for Speaker Berger.</p> <p>5 MR. FARR: Speaker Berger?</p> <p>6 THE WITNESS: Sorry. Now I'm getting</p> <p>7 tired.</p> <p>8 Andrew Tripp is counsel for Senator</p> <p>9 Berger. And there were no other members in the</p> <p>10 room. It is possible that my staff aide, Mark</p> <p>11 Coggins, was there as well, but I don't</p> <p>12 remember.</p> <p>13 BY MR. THORPE:</p> <p>14 Q. And the purpose of that meeting was to discuss</p> <p>15 the criteria that had been drafted?</p> <p>16 A. That was one of the purposes, yes.</p> <p>17 Q. What were the others?</p> <p>18 A. We talked about the criteria that had been</p> <p>19 drafted. We talked about some of the individual</p> <p>20 feedback from the public hearing that we had</p> <p>21 just held. We talked about the logistics as far</p> <p>22 as we were going to use -- which committee room</p> <p>23 we were going to use.</p> <p>24 We talked about, basically, were there</p> <p>25 any changes from -- you know, that at that point</p> <p style="text-align: right;">102</p>	<p>1 purpose at the meeting?</p> <p>2 A. As general counsel to Senator Berger, he often</p> <p>3 assists, just like Mark Goodson who was general</p> <p>4 counsel to Speaker Moore. How do you say this</p> <p>5 politely. I think they just kind of look over</p> <p>6 our shoulder to be sure that the corner offices</p> <p>7 are in the loop of what's going on.</p> <p>8 Q. And with the understanding that this would</p> <p>9 prompt an instruction, I need to be clear: Had</p> <p>10 you received any instruction from either Senator</p> <p>11 Berger or Speaker Moore regarding the criteria</p> <p>12 that are to be included in the 2016 map?</p> <p>13 MR. FARR: Because he can't waive their</p> <p>14 legislative privilege, he cannot answer that</p> <p>15 question.</p> <p>16 MR. THORPE: I understand. Can you</p> <p>17 instruct him not to answer.</p> <p>18 MR. FARR: I think I just did.</p> <p>19 BY MR. THORPE:</p> <p>20 Q. Okay. Was there any -- there were no changes to</p> <p>21 the adopted criteria that had been presented for</p> <p>22 the purpose of that meeting?</p> <p>23 A. That's correct.</p> <p>24 Q. So it was decided that the adopted criteria as</p> <p>25 presented at that meeting would be submitted to</p> <p style="text-align: right;">104</p>

<p>1 the joint committee at the meeting to follow the</p> <p>2 next morning?</p> <p>3 A. That's correct.</p> <p>4 Q. And it was decided that you would present the</p> <p>5 adopted criteria to the joint committee?</p> <p>6 A. That's correct.</p> <p>7 Q. Who made that decision?</p> <p>8 A. To be candid, Senator Rucho likes to preside.</p> <p>9 So we've worked together, so I got to present</p> <p>10 and he presided.</p> <p>11 Q. Did you present the criteria that were then</p> <p>12 available to you and those at that meeting to</p> <p>13 Dr. Hofeller at that time?</p> <p>14 A. I don't -- I don't think so.</p> <p>15 Q. So the written criteria were not available to</p> <p>16 Dr. Hofeller before -- when did the written</p> <p>17 criteria become available to Dr. Hofeller?</p> <p>18 A. I don't think the written criteria was available</p> <p>19 to him until it was adopted by the committee.</p> <p>20 Q. Okay. And how was it communicated to him after</p> <p>21 it was adopted by the committee?</p> <p>22 A. I believe that I had a phone call with him that</p> <p>23 said the map that we saw was the one that I want</p> <p>24 to introduce. If any of this criteria hadn't</p> <p>25 passed the committee, we'd have to really</p> <p style="text-align: right;">105</p>	<p>1 determining that or that would be governed by</p> <p>2 legislative rule?</p> <p>3 A. The leadership has the discretion to appoint the</p> <p>4 committee.</p> <p>5 Q. And the limited role of the committee was to</p> <p>6 offer an enacted plan to be voted on by the --</p> <p>7 in the special session?</p> <p>8 A. I think that's accurate, yes, sir.</p> <p>9 Q. And what defines the role of the chairs within</p> <p>10 the committee?</p> <p>11 A. Well, a chair is responsible for the</p> <p>12 administrative functions of the committee. It's</p> <p>13 our job to ensure that staff is adequately</p> <p>14 provided a committee room, that the materials</p> <p>15 are available for the members, that the public</p> <p>16 has access, you know, everything from the copies</p> <p>17 are made to the microphones work to the actual</p> <p>18 policy leadership.</p> <p>19 Typically a committee chair will chair</p> <p>20 a committee of which they have particular</p> <p>21 interest. If you have interest in tax law, you</p> <p>22 would chair the finance committee, for instance.</p> <p>23 Q. In your role as cochair of the joint committee</p> <p>24 for 2016, did you receive any instruction as --</p> <p>25 I'm sorry.</p> <p style="text-align: right;">107</p>
<p>1 scramble and redraw, but it did.</p> <p>2 Q. That conversation occurred after the joint</p> <p>3 select committee meeting on February 16?</p> <p>4 A. Yes, sir.</p> <p>5 Q. This was a telephone conversation just between</p> <p>6 you and Dr. Hofeller?</p> <p>7 A. Yes.</p> <p>8 Q. And you communicated to him because the adopted</p> <p>9 criteria had passed, the map that you had both</p> <p>10 viewed in your earlier meeting was the map that</p> <p>11 you would use?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Let's talk about the makeup of the joint</p> <p>14 committee for a second.</p> <p>15 You said that you served on the House</p> <p>16 committee during 2011 as senior chair. Senator</p> <p>17 Rucho was in the Senate. The joint committee</p> <p>18 has a different makeup. Who determined the</p> <p>19 makeup of that committee?</p> <p>20 A. Speaker Moore on behalf of the House and Senator</p> <p>21 Berger on behalf of the Senate.</p> <p>22 Q. And what is the partisan makeup of that</p> <p>23 committee?</p> <p>24 A. I don't know.</p> <p>25 Q. But they would have been responsible for</p> <p style="text-align: right;">106</p>	<p>1 Is there any written document that</p> <p>2 explains your authority in that role?</p> <p>3 A. I don't believe the document addressed my</p> <p>4 authority. There would be a written appointment</p> <p>5 letter that Speaker Moore would have written and</p> <p>6 signed.</p> <p>7 A lot of the authority of a committee</p> <p>8 chair is just inherent to being named the chair.</p> <p>9 Q. Did anything in that appointment letter</p> <p>10 reference the adoption of criteria that would</p> <p>11 govern the drawing of the map?</p> <p>12 A. No, sir.</p> <p>13 Q. So on what basis did you and Senator Rucho</p> <p>14 determine that part of your responsibility in</p> <p>15 chairing the committee was to develop written</p> <p>16 criteria?</p> <p>17 A. In 2011, we adopted criteria. We sought input</p> <p>18 from various sources. We produced the</p> <p>19 Legislator's Guide to Redistricting, and to be</p> <p>20 candid with you, during one of the depositions,</p> <p>21 I believe in this room, one of the attorneys,</p> <p>22 Mr. Speas, I believe, asked me several questions</p> <p>23 to the tune of you -- you put this book out</p> <p>24 there but the committee never voted on it. So I</p> <p>25 was trying to learn from past things that had</p> <p style="text-align: right;">108</p>

<p>1 caused consternation and I thought by having the</p> <p>2 committee adopt the criteria that I had used</p> <p>3 that that would be one less thing that a court</p> <p>4 could object to or I could be criticized for not</p> <p>5 being open about the criteria that I used.</p> <p>6 Q. And as to the former, is that because the</p> <p>7 criteria adopted by the committee would bind the</p> <p>8 committee's members in consideration of a map?</p> <p>9 A. The criteria that was adopted by the committee</p> <p>10 would be the guiding point, if you will, of maps</p> <p>11 that the committee would consider.</p> <p>12 Q. So the committee would not consider maps that</p> <p>13 violated the criteria laid out by the committee?</p> <p>14 A. So --</p> <p>15 MR. FARR: I want to object to the form</p> <p>16 of that, but you can answer.</p> <p>17 THE WITNESS: Well, to be clear, I</p> <p>18 don't -- I don't feel comfortable saying what</p> <p>19 Senator Rucho as the chairman would have allowed</p> <p>20 to be sent forward. I would have opposed it if</p> <p>21 it violated the criteria that the committee had</p> <p>22 adopted.</p> <p>23 BY MR. THORPE:</p> <p>24 Q. Now, you referenced a moment ago a book that</p> <p>25 came up in your depositions from the 2011</p> <p style="text-align: right;">109</p>	<p>1 marked Exhibit 34 which is committee transcripts</p> <p>2 and specifically the joint committee hearing on</p> <p>3 the 16th.</p> <p>4 Who made the decision to present the</p> <p>5 written criteria one by one?</p> <p>6 A. I did.</p> <p>7 Q. And did you also make the decision to have the</p> <p>8 committee members vote on the criteria before</p> <p>9 all of the remaining criteria were available?</p> <p>10 A. I did.</p> <p>11 Q. Why did you make that decision?</p> <p>12 A. I wanted to make sure that each of the members,</p> <p>13 first of all, focused on the criteria that was</p> <p>14 before them.</p> <p>15 It's been my experience in the</p> <p>16 legislature, as with many other things, if you</p> <p>17 put ten items on a sheet, people get distracted</p> <p>18 looking at number six when you need their</p> <p>19 attention on number one. So that's the first</p> <p>20 reason.</p> <p>21 The second is had any of these not</p> <p>22 passed, we may would have had to adjust</p> <p>23 subsequent ones to be able to produce a map.</p> <p>24 Q. Did you have alternative drafts of subsequent</p> <p>25 criterion in case some of these didn't pass?</p> <p style="text-align: right;">111</p>
<p>1 redistricting. Is that any written criteria or</p> <p>2 is that the legislative guide that was</p> <p>3 introduced as an exhibit on Tuesday?</p> <p>4 A. I was referring to the legislative guide that</p> <p>5 was introduced on Tuesday.</p> <p>6 Q. So in the 2011 redistricting, there was no</p> <p>7 written set of criteria for how maps were to be</p> <p>8 drawn?</p> <p>9 A. No. In 2011, there was written criteria that</p> <p>10 was released with each map, but what the</p> <p>11 criticism was was that it was Rucho and my</p> <p>12 criteria and not formally adopted by a</p> <p>13 committee. We released a statement explaining</p> <p>14 the criteria with each map that we released, but</p> <p>15 the committees didn't vote on those statements.</p> <p>16 Q. I understand. So the formal adoption of the</p> <p>17 criteria is meant to reflect the joint</p> <p>18 committee's at least majority view on the</p> <p>19 constraints under which the maps will be built,</p> <p>20 correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. If you've -- I think you've already got it in</p> <p>23 front of you, but we're going to talk about</p> <p>24 Deposition Exhibit 24, and I'm also likely to</p> <p>25 talk about stuff from the Exhibit 34, previously</p> <p style="text-align: right;">110</p>	<p>1 A. I did not. We would have -- I thought about</p> <p>2 that a lot, and we would have had to recess and</p> <p>3 regroup had that happened.</p> <p>4 Q. So you began the session by explaining the goal</p> <p>5 of this plan. What was the goal as you stated</p> <p>6 it to the joint committee?</p> <p>7 A. Sir, I know you're looking at the committee</p> <p>8 transcript. I'll be happy to read it, but I</p> <p>9 don't remember what I said.</p> <p>10 Q. Well, more generally, what was your</p> <p>11 understanding of the goal of placing these</p> <p>12 particular adopted criteria before the</p> <p>13 committee?</p> <p>14 A. In this case, I think that the transcript would</p> <p>15 better speak for itself. As I recall, it is to</p> <p>16 establish what criteria were going to be used in</p> <p>17 creating and evaluating the finished product</p> <p>18 that the committee was tasked with producing.</p> <p>19 Q. And you had previously testified that -- scratch</p> <p>20 that.</p> <p>21 So I want to jump to the discussion of</p> <p>22 political data as a criteria that begins --</p> <p>23 criterion that begins on Page 24.</p> <p>24 A. I'm at Page 24, sir.</p> <p>25 Q. So we just testified that these were being</p> <p style="text-align: right;">112</p>

<p>1 introduced one at a time, but in fact, what</p> <p>2 would happen is as one was being discussed, the</p> <p>3 next individual page would be circulated to the</p> <p>4 members, correct?</p> <p>5 A. I don't recall. The sergeant-at-arms kind of</p> <p>6 take control of the administrative part of that.</p> <p>7 I don't know that it was my intent that they</p> <p>8 went out early, but that may have happened. I</p> <p>9 don't know.</p> <p>10 Q. And if you look at the bottom of Page 24,</p> <p>11 there's a short back and forth between Senator</p> <p>12 Rucho and you about whether to hand out the</p> <p>13 criteria as before after Political Data and you</p> <p>14 indicate on Line 25 "Let's not distribute."</p> <p>15 Which is the criteria that follows</p> <p>16 Political Data? That's Partisan Advantage,</p> <p>17 correct?</p> <p>18 MR. FARR: Objection to the form, but</p> <p>19 you can answer if you can.</p> <p>20 BY MR. THORPE:</p> <p>21 Q. The criteria to be distributed following after</p> <p>22 Political Data was Partisan Advantage, correct?</p> <p>23 A. So I apologize if I didn't understand exactly</p> <p>24 what you were asking. On Page 24, it does --</p> <p>25 Senator Rucho does ask me do I -- he said</p> <p style="text-align: right;">113</p>	<p>1 first criteria that was made available to the</p> <p>2 committee was Equal Population. And you earlier</p> <p>3 testified that that is sacrosanct, correct?</p> <p>4 A. I did.</p> <p>5 Q. Meaning that all necessary steps would be taken</p> <p>6 to make districts as equal as practicable?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And in North Carolina, that means essentially</p> <p>9 one person difference?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you make -- is your testimony before the</p> <p>12 committee or before any of these other groups</p> <p>13 that that is necessary and non-negotiable as a</p> <p>14 criterion?</p> <p>15 A. I don't recall what I said to the committee</p> <p>16 about that.</p> <p>17 I'll go on, if you'd like, and say that</p> <p>18 when you're working on getting things going, a</p> <p>19 lot of times you start with the one that the</p> <p>20 most people understand, and this -- of course</p> <p>21 there was no objection to that one. So you kind</p> <p>22 of establish how the committee's going to run by</p> <p>23 something that there's not going to be</p> <p>24 disagreement on.</p> <p>25 Q. But the members of a Congressional Redistricting</p> <p style="text-align: right;">115</p>
<p>1 "You've got political data before you. Do you</p> <p>2 want the next criteria sent out to members," and</p> <p>3 I said "Let's do the political data and then</p> <p>4 move on to the next one. Let's not distribute."</p> <p>5 Q. And when you refer to the "next one," the next</p> <p>6 one would be Political Data -- I'm sorry --</p> <p>7 Partisan Advantage, correct? This is -- I would</p> <p>8 just refer you to 24 as they were handed out in</p> <p>9 order.</p> <p>10 A. Well, to be candid with you, I don't know -- so</p> <p>11 for the sake of this deposition, I will say that</p> <p>12 we went in the same order that they're on this</p> <p>13 page, but I just don't remember.</p> <p>14 Q. Okay. You can also, if you want, have</p> <p>15 Deposition Exhibit 35 in front of you because it</p> <p>16 has them in the order that they were handed out.</p> <p>17 Regardless, was there a discussion in</p> <p>18 advance of the joint committee hearing of the</p> <p>19 difficulty associated with including partisan</p> <p>20 advantage as a criteria in the adopted criteria?</p> <p>21 A. I don't recall a discussion noting that this</p> <p>22 criteria had any more difficulty than the rest.</p> <p>23 Q. Okay. So to go through the criteria sort of one</p> <p>24 by one -- and we'll go back to certain aspects</p> <p>25 of your testimony before the committee -- the</p> <p style="text-align: right;">114</p>	<p>1 Committee generally understand the one-person,</p> <p>2 one-vote requirements to be mandatory?</p> <p>3 A. Yes, sir, I think so.</p> <p>4 Q. What about the criterion for contiguity, is that</p> <p>5 similarly easy to sell as a pretty much</p> <p>6 mandatory criteria?</p> <p>7 A. I believe so.</p> <p>8 Q. And the third criterion, Political Data, we've</p> <p>9 earlier talked about some of the details of this</p> <p>10 which is the basket of elections that would be</p> <p>11 used.</p> <p>12 How did you determine that this</p> <p>13 criteria should include election results rather</p> <p>14 than registration data?</p> <p>15 A. It is my belief that election results are a</p> <p>16 better predictor of voting behavior than is</p> <p>17 registration.</p> <p>18 Q. Why is that?</p> <p>19 A. Because registration is generally a one-time</p> <p>20 thing. People sometimes change their mind,</p> <p>21 change the way they think about things but don't</p> <p>22 go to the trouble to change their registration.</p> <p>23 And also, frankly, North Carolina has a very</p> <p>24 large population that is registered as</p> <p>25 unaffiliated with either political party. So it</p> <p style="text-align: right;">116</p>

<p>1 is -- you can just tell more about how an area</p> <p>2 generally votes by the way it votes than the way</p> <p>3 folks are registered.</p> <p>4 Q. And the data that would be available to the map</p> <p>5 drawer and to the folks voting on the map under</p> <p>6 political data would be at the voting district</p> <p>7 level?</p> <p>8 A. So two-part question. Certainly the data would</p> <p>9 have been available to the map drawer. The</p> <p>10 committee was provided basically towards the end</p> <p>11 a stat pack. They could have asked and got more</p> <p>12 detailed. I don't know if any of them did or</p> <p>13 not.</p> <p>14 Q. So the stat pack that was provided to the</p> <p>15 committee provided it at a district-wide basis?</p> <p>16 A. Yes, sir, I believe that's correct.</p> <p>17 Q. And you made the determination not to include</p> <p>18 the last two presidential contests, correct?</p> <p>19 A. It was my understanding that -- I don't remember</p> <p>20 if it was the Harris court or another court, but</p> <p>21 I had come under the understanding that we were</p> <p>22 directed not to use that race.</p> <p>23 Q. But you made that decision?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And you instructed Dr. Hofeller to follow that</p> <p style="text-align: right;">117</p>	<p>1 A. We did not.</p> <p>2 Q. You had no discussion with Dr. Hofeller</p> <p>3 regarding VRA compliance?</p> <p>4 A. We did not. And the reason is that our</p> <p>5 reading -- my reading of the Harris case said</p> <p>6 that we had not established a pattern of</p> <p>7 racially polarized voting. Again, I would</p> <p>8 respectfully disagree with that, but</p> <p>9 nonetheless, the Court made that determination,</p> <p>10 and so we were drawing a map to comply with the</p> <p>11 Harris order.</p> <p>12 Q. So based on your instruction, Dr. Hofeller had</p> <p>13 no discretion to evaluate the VRA compliance of</p> <p>14 the maps that he drew, correct?</p> <p>15 MR. FARR: Objection to the form.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: I don't exactly</p> <p>18 understand what you're asking, but I will simply</p> <p>19 say Dr. Hofeller was instructed not to look at</p> <p>20 the race of the people in the districts in which</p> <p>21 he was drawing. Race was not to be a</p> <p>22 consideration or factor in the drawing of these</p> <p>23 maps.</p> <p>24 And, sir, while you're getting ready, I</p> <p>25 do want to state for the record that you were</p> <p style="text-align: right;">119</p>
<p>1 decision?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And also included in this criterion "No data</p> <p>4 identifying the race of individual voters shall</p> <p>5 be used in the construction or consideration of</p> <p>6 districts."</p> <p>7 A. That's correct.</p> <p>8 Q. That means that unavailable to the map drawer</p> <p>9 would be your standard census data that includes</p> <p>10 metrics like race, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And did you instruct Dr. Hofeller not to look at</p> <p>13 any data he may otherwise have regarding the</p> <p>14 race of individuals that would live in the</p> <p>15 designed districts?</p> <p>16 A. I did.</p> <p>17 Q. How did you instruct him of that?</p> <p>18 A. That was one of the initial conversations we had</p> <p>19 in trying to understand and communicate what we</p> <p>20 thought the Harris court said, which is race</p> <p>21 shouldn't be used as a factor. So we just said</p> <p>22 we won't use it at all.</p> <p>23 Q. In the context of that discussion, did you also</p> <p>24 discuss whether and how the 2016 map would</p> <p>25 comply with the Voting Rights Act?</p> <p style="text-align: right;">118</p>	<p>1 right, based on this, the next one considered</p> <p>2 was partisan advantage. I was ambiguous about</p> <p>3 that. You were correct.</p> <p>4 BY MR. THORPE:</p> <p>5 Q. Do you recall why you responded to Senator</p> <p>6 Rucho's question by asking him to hold back the</p> <p>7 partisan advantage criteria from distribution?</p> <p>8 A. Yes. Because I wanted members to focus on what</p> <p>9 we were saying one at a time.</p> <p>10 Q. And you recognize that with other criteria, like</p> <p>11 contiguity, they were passed out while the prior</p> <p>12 one was being discussed, correct?</p> <p>13 A. I don't recall that. I can say that when you're</p> <p>14 presenting to the committee, you're not in</p> <p>15 control of the functions of it.</p> <p>16 Q. Understood.</p> <p>17 Did you know at the time that this was</p> <p>18 being distributed that partisan advantage would</p> <p>19 be among these criteria more controversial than</p> <p>20 others?</p> <p>21 A. I feel like it probably would, yes.</p> <p>22 Q. And why is that?</p> <p>23 A. Partisanship always gets people concerned. And,</p> <p>24 you know, it's clear to me that the Democrats in</p> <p>25 the General Assembly would prefer some map be</p> <p style="text-align: right;">120</p>

<p>1 created that better suited what they considered</p> <p>2 to be the correct partisan makeup of the maps.</p> <p>3 I thought long and hard about maybe</p> <p>4 saving that one and running the incumbency one</p> <p>5 because, again, people know what the incumbents</p> <p>6 are, I mean, you just do, but I believe that</p> <p>7 every decision that is made, even if it's in a</p> <p>8 capacity in which you're not trying to exercise</p> <p>9 partisanship comes from the perspective of your</p> <p>10 view of life, and I think it's just honest to</p> <p>11 say that we're going to -- we're going to</p> <p>12 acknowledge that partisanship is in this.</p> <p>13 And I will point out that as it's</p> <p>14 written that it just says that the committee</p> <p>15 shall make reasonable efforts to construct the</p> <p>16 2016 Contingent Congressional Plan to maintain</p> <p>17 the current partisan makeup.</p> <p>18 Q. And that is the current partisan makeup as</p> <p>19 reflected in the 2011 maps, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the partisan performance of the districts in</p> <p>22 the 2011 map was evaluated at the time the 2011</p> <p>23 maps were enacted, correct?</p> <p>24 A. I'm sorry. Would you repeat that question.</p> <p>25 Q. At the time that you passed the 2011 maps, one</p> <p style="text-align: right;">121</p>	<p>1 question, please.</p> <p>2 BY MR. THORPE:</p> <p>3 Q. When you say maintain the current partisan</p> <p>4 makeup of North Carolina's congressional</p> <p>5 delegation, you are referring to the partisan</p> <p>6 makeup, in your words, established by the 2012</p> <p>7 election, the first election in this</p> <p>8 redistricting cycle, correct?</p> <p>9 MR. FARR: Objection.</p> <p>10 THE WITNESS: I apologize. I'm not</p> <p>11 understanding what you're asking.</p> <p>12 BY MR. THORPE:</p> <p>13 Q. The current partisan makeup of the</p> <p>14 North Carolina congressional delegation at the</p> <p>15 time of this map is 10 Republicans and 3</p> <p>16 Democrats, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. That has been the partisan makeup of the</p> <p>19 North Carolina congressional delegation since</p> <p>20 the 2014 election, correct?</p> <p>21 A. I believe since the 2012 election.</p> <p>22 Q. Just to --</p> <p>23 MR. FARR: We'll stipulate to the</p> <p>24 facts.</p> <p>25 BY MR. THORPE:</p> <p style="text-align: right;">123</p>
<p>1 of the factors that you evaluated was the</p> <p>2 expected partisan performance of those maps.</p> <p>3 A. Yes, sir.</p> <p>4 Q. And the 2012 congressional election did not</p> <p>5 maintain the partisan balance of</p> <p>6 North Carolina's congressional delegation, did</p> <p>7 it?</p> <p>8 A. The 2012 election elected 13 members of Congress</p> <p>9 and that established the balance, if you want to</p> <p>10 use that word.</p> <p>11 Q. It established a balance. So is it correct to</p> <p>12 say that each decennial redistricting, assuming</p> <p>13 that there's just one in a ten-year period,</p> <p>14 establishes the balance between parties for the</p> <p>15 purposes of a congressional delegation?</p> <p>16 A. I think that after the census is performed, the</p> <p>17 task of establishing criteria to draw lawful</p> <p>18 districts begin, and the construction of those</p> <p>19 districts will yield some political outcome when</p> <p>20 the elections are held.</p> <p>21 Q. And the political goal of maintaining that</p> <p>22 balance over the course of a redistricting cycle</p> <p>23 is what you are referring to in this criterion?</p> <p>24 MR. FARR: Objection to form.</p> <p>25 THE WITNESS: Would you repeat the</p> <p style="text-align: right;">122</p>	<p>1 Q. Just to stipulate to the facts, let's assume the</p> <p>2 2012 election was 9 Republicans and 4 Democrats.</p> <p>3 MR. FARR: Excuse me. Can I just say</p> <p>4 something. David McIntire was elected in 2012.</p> <p>5 THE WITNESS: Okay. I was just trying</p> <p>6 to answer. I didn't remember that.</p> <p>7 MR. FARR: Right. He just didn't</p> <p>8 remember that. No big deal.</p> <p>9 BY MR. THORPE:</p> <p>10 Q. But the current partisan makeup is 10-3 and</p> <p>11 that's a makeup that existed under the 2011</p> <p>12 maps?</p> <p>13 A. Yes, sir.</p> <p>14 Q. A goal that these criteria pursue is maintaining</p> <p>15 the balance from that map?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And why is that a legitimate goal?</p> <p>18 A. In my opinion and in my firmest belief, the 2011</p> <p>19 enacted map was drawn in compliance with the</p> <p>20 law. That map had elected -- in 2014 -- I'll</p> <p>21 correct myself -- 10 Republicans and 3</p> <p>22 Democrats. We were being ordered by a court to</p> <p>23 redraw the map. I could not see any reason to</p> <p>24 not consider among the other factors that as of</p> <p>25 the day before the Harris decision came down the</p> <p style="text-align: right;">124</p>

<p>1 Republicans maintained a partisan advantage of</p> <p>2 10 seats to 3 seats. I could not see a reason</p> <p>3 why -- again, being ordered to redraw these</p> <p>4 maps -- that we would not make maintaining that</p> <p>5 a goal, not the sole goal but a goal.</p> <p>6 Q. When you said before the committee you</p> <p>7 acknowledge freely this would be a political</p> <p>8 gerrymander, which is not against the law, what</p> <p>9 was the basis for that statement?</p> <p>10 A. We were back in session. Because a court had</p> <p>11 ruled that an idea, a map, if you will, that I</p> <p>12 drew -- that I was responsible for, I take</p> <p>13 ownership, my name is on it, Rucho-Lewis 2 or</p> <p>14 something like that -- was racially</p> <p>15 gerrymandered, I took -- I respectfully continue</p> <p>16 to disagree with that, but my comment -- and if</p> <p>17 you show me the page, I'll be --</p> <p>18 Q. This is on Page 48.</p> <p>19 A. My comment there was to reinforce the fact that</p> <p>20 we were there because we were accused of doing a</p> <p>21 racial gerrymander and that there was no way</p> <p>22 anybody could accuse us in this map because we</p> <p>23 did not look at race.</p> <p>24 What I should have continued to say</p> <p>25 probably is those that will continue to disagree</p> <p style="text-align: right;">125</p>	<p>1 MR. THORPE: This is the joint</p> <p>2 committee.</p> <p>3 THE WITNESS: Page 48.</p> <p>4 MR. THORPE: Page 48 of the joint</p> <p>5 committee hearing on the 16th.</p> <p>6 THE WITNESS: Yes, sir, that's what I</p> <p>7 said. And to be clear for everybody, we're on</p> <p>8 Exhibit 34, Page 48.</p> <p>9 BY MR. THORPE:</p> <p>10 Q. Is it Tab 1?</p> <p>11 A. Yes, sir.</p> <p>12 Q. There was already a map that had been drawn at</p> <p>13 the time that you made this statement, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And did that -- was that map likely to elect 10</p> <p>16 Republicans and 3 Democrats in your assessment</p> <p>17 based on what you knew at the time?</p> <p>18 A. Based on my assessment and what I knew at the</p> <p>19 time, it gave Republicans an opportunity to</p> <p>20 elect 10 members to Congress.</p> <p>21 Q. And what was your basis for believing that?</p> <p>22 A. I had looked at the historical performance of</p> <p>23 the districts, namely, the Tillis-Hagan race,</p> <p>24 and I believe that because Tillis had done well,</p> <p>25 that gave the Republicans an opportunity to</p> <p style="text-align: right;">127</p>
<p>1 with the map will call it a political</p> <p>2 gerrymander, but I don't -- I did say "which is</p> <p>3 not against the law" because it's my</p> <p>4 understanding that it's not.</p> <p>5 So I'll be happy to try to elaborate</p> <p>6 more, but I don't want to take your time either.</p> <p>7 Q. You stand by the statement that you make on</p> <p>8 Pages 4 to -- I'm sorry -- Lines 4 to 6 on</p> <p>9 Page 48?</p> <p>10 A. I would point out -- first, yes, but I would</p> <p>11 point out on Line 4 that my use of saying that</p> <p>12 this would be is I could have better worded that</p> <p>13 and saying there is no way you could consider</p> <p>14 this a racial gerrymander, which is what's</p> <p>15 brought all of us back up here to Raleigh. The</p> <p>16 only way you could possibly attack it would be</p> <p>17 as a political gerrymander.</p> <p>18 Q. Understood.</p> <p>19 And you acknowledge that that attack</p> <p>20 might occur after saying "I would propose that</p> <p>21 to the extent possible, the map drawers create a</p> <p>22 map which is perhaps likely to elect 10</p> <p>23 Republicans and 3 Democrats."</p> <p>24 Did I read that correctly?</p> <p>25 MR. FARR: What tab and page is this?</p> <p style="text-align: right;">126</p>	<p>1 elect possibly 10 seats.</p> <p>2 Q. To be clear, you had evaluated each new district</p> <p>3 under the results of the 2014 Senate</p> <p>4 Tillis-Hagan race?</p> <p>5 A. That's correct.</p> <p>6 Q. And the result of placing those election results</p> <p>7 into the new districts was a 10-3 Republican</p> <p>8 advantage, correct?</p> <p>9 A. To the best of my memory, yes.</p> <p>10 Q. Did you evaluate the historical performance of</p> <p>11 all of those districts by any other race?</p> <p>12 A. At the time of drawing the map, no, but prior to</p> <p>13 presenting the map I did, yes.</p> <p>14 Q. Prior to presenting the map to the committee?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Please explain when that occurred, how</p> <p>17 that occurred.</p> <p>18 A. The next day, or whenever I rolled the map out,</p> <p>19 the stat pack was there and I had to explain it</p> <p>20 to the committee. So at the same time I was</p> <p>21 familiarizing myself with it, obviously I read</p> <p>22 it.</p> <p>23 So I would have learned, for instance,</p> <p>24 that in 2008, Attorney General Roy Cooper</p> <p>25 carried all 13 of these seats. I would have</p> <p style="text-align: right;">128</p>

<p>1 learned that in 2012, the state auditor, who was 2 a Democrat, won six or seven of these seats. I 3 would have seen all that, yes. 4 Q. And at the time you had seen the map, but the 5 others that were going to see the stat pack had 6 not seen the map; is that correct? 7 A. That's right. 8 Q. So at the time you made this statement to the 9 committee in asking them to vote for the 10 criterion partisan advantage, you were the one 11 that had viewed, other than Dr. Hofeller, the 12 historical performance of these new districts 13 based on these prior elections, correct? 14 MR. FARR: Objection. 15 THE WITNESS: It's possible that 16 Senator Rucho had as well. 17 BY MR. THORPE: 18 Q. If you would turn in the same transcript to 19 Page 54, though you may want to start on Page 53 20 which is the beginning of your statement. You 21 say at the end of Page 53: 22 "Mr. Chairman, the only thing I 23 could add is that we want to make clear 24 that we -- that we, to the extent we are 25 going to use political data in drawing</p> <p style="text-align: right;">129</p>	<p>1 of, in your words, gaining partisan advantage, 2 correct? 3 A. Yes, sir, that's what I said. 4 Q. And at the time that you made this statement, 5 you had evaluated the likely outcome of 6 congressional races in the newly designed 7 districts under at least some of those 8 historical election returns, correct? 9 A. Yes, sir. 10 Q. And other than Senator Rucho and Dr. Hofeller, 11 no one else had at that time evaluated the new 12 districts under that same data? 13 MR. FARR: Objection to the form. 14 You may answer. 15 THE WITNESS: I don't know. I hadn't 16 shown it to anyone else. 17 BY MR. THORPE: 18 Q. But to your knowledge they had not? 19 A. Correct. 20 Q. I want to better understand exactly why the 21 political data matters for that purpose. So if 22 you could turn to Page 57. Beginning on 23 Line 7, in response to a question of what 24 constitutes partisan advantage, you say -- I'm 25 sorry -- beginning on Line 8:</p> <p style="text-align: right;">131</p>
<p>1 this map, it is to gain partisan 2 advantage on the map. I want that 3 criteria to be clearly stated and 4 understood." 5 What do you mean by "gain partisan 6 advantage"? 7 A. Every line that's drawn creates some grouping of 8 people. I was being clear that the use of the 9 political data would be for the purpose of 10 trying to comply with the criteria, specifically 11 the one about the partisan advantage. 12 Q. Okay. So just to walk through that a little bit 13 more mechanically, you have asked the committee 14 to approve a criterion that says let's use 15 political data and defines that political data 16 as past election results, correct? 17 A. Yes, sir. 18 Q. And you have asked the committee to approve a 19 criteria that says partisan advantage will be 20 one of the considerations in determining, as you 21 testified earlier, the constraints that will 22 govern the map that we adopt, correct? 23 A. Yes, sir. 24 Q. And this statement is a statement that the use 25 of that political data will be for the purpose</p> <p style="text-align: right;">130</p>	<p>1 "To perhaps expound on it a bit, 2 this would contemplate looking at the 3 political data, which was an earlier 4 criteria adopted by this committee, and 5 as you draw the lines, if you're trying 6 to give a partisan advantage, you would 7 want to draw the lines so that more of 8 the whole VTDs voted for the Republican 9 on the ballot than they did a Democrat, 10 if that answers your question." 11 So is that your understanding of how 12 the map drawer, here Dr. Hofeller, uses 13 political data for drawing maps that better 14 satisfy the partisan advantage criteria? 15 A. Among the other criteria, yes. 16 Q. To repeat the question. To better satisfy 17 specifically the partisan advantage criteria, is 18 it your understanding that the mechanism you 19 describe here on Page 57 is what Dr. Hofeller 20 does to change the lines within the maps? 21 MR. FARR: Objection to the form. 22 You may answer. 23 THE WITNESS: Yes. 24 BY MR. THORPE: 25 Q. Have you observed Dr. Hofeller, or any other map</p> <p style="text-align: right;">132</p>

<p>1 drawer, moving a VTD from one district to</p> <p>2 another and the resulting difference in likely</p> <p>3 election results?</p> <p>4 A. I have, yes.</p> <p>5 Q. And on Page 62, we have mostly covered this</p> <p>6 ground, but on Line 18 and 19 you say:</p> <p>7 "The goal is to elect 10 Republicans</p> <p>8 and 3 Democrats."</p> <p>9 Is that correct? Did I read that --</p> <p>10 A. You did, sir.</p> <p>11 Q. And you stand by that statement as to the</p> <p>12 partisan advantage criteria?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Was there any reason that you felt that the</p> <p>15 partisan advantage criteria was necessary to the</p> <p>16 plan that you would adopt?</p> <p>17 MR. FARR: Objection to form.</p> <p>18 You may answer.</p> <p>19 THE WITNESS: I --</p> <p>20 BY MR. THORPE:</p> <p>21 Q. I'm going to ask a different question.</p> <p>22 You earlier described certain partisan</p> <p>23 considerations as discretionary. Was there</p> <p>24 anything about the drafting of the 2016 plan and</p> <p>25 your responsibility for it that made you feel</p> <p style="text-align: right;">133</p>	<p>1 So when you have 10 incumbent members</p> <p>2 of Congress who are Republicans, it kind of</p> <p>3 reassures them that you're not out to get them</p> <p>4 too.</p> <p>5 BY MR. THORPE:</p> <p>6 Q. To move forward in the -- let me ask one other</p> <p>7 version of my question.</p> <p>8 Based on your understanding of the</p> <p>9 Harris decision, was there any requirement in</p> <p>10 the Harris decision that you consider partisan</p> <p>11 advantage?</p> <p>12 A. No.</p> <p>13 Q. There was, however, what you viewed as a</p> <p>14 requirement to change the shape of the 12th</p> <p>15 district, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And that is the explanation for the 12th</p> <p>18 district criterion?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And your solution, as you earlier testified, to</p> <p>21 the 12th district problem was to move the 12th</p> <p>22 district into Mecklenburg county, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And that new county -- I'm sorry. That new</p> <p>25 district at the time that you presented this</p> <p style="text-align: right;">135</p>
<p>1 that you were required to include partisan</p> <p>2 advantage as a criteria?</p> <p>3 MR. FARR: Objection to the form.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: We were there because we</p> <p>6 had been accused in my opinion wrongly, a court</p> <p>7 found wrong in my opinion, respectfully, that we</p> <p>8 racially gerrymandered a map.</p> <p>9 We made clear at the time that we</p> <p>10 followed the law in 2011. We also made clear</p> <p>11 that we had political considerations then as</p> <p>12 well. Those were, for whatever reason -- well,</p> <p>13 because of the court order we were back.</p> <p>14 So I was making sure in part that I was</p> <p>15 reaffirming that the districts that I was going</p> <p>16 to produce were going to provide an opportunity</p> <p>17 for 10 Republicans to win reelection.</p> <p>18 And if I may, because I was going to</p> <p>19 answer you a while ago, if you've ever been</p> <p>20 asked -- if you ever have the opportunity to be</p> <p>21 tasked with doing this, there's nothing more</p> <p>22 personal to a member of a legislature than the</p> <p>23 district they serve. It doesn't matter if it's</p> <p>24 the State House district, a U.S. House district,</p> <p>25 that district is precious to those folks.</p> <p style="text-align: right;">134</p>	<p>1 criterion, you were aware of the partisan</p> <p>2 political performance of that new district,</p> <p>3 correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. You knew that that would be a -- remain a</p> <p>6 Democratic district?</p> <p>7 A. I knew that it likely would, yes.</p> <p>8 MR. FARR: I think you said that</p> <p>9 before.</p> <p>10 BY MR. THORPE:</p> <p>11 Q. The compactness criteria that you introduced you</p> <p>12 earlier testified includes on your instruction</p> <p>13 the idea that division of counties should be</p> <p>14 minimized and that VTDs should be kept whole</p> <p>15 where possible, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. There is a sentence in here I want to discuss</p> <p>18 which is "Division of counties shall only be</p> <p>19 made for reasons of equalizing population,</p> <p>20 consideration of incumbency and political</p> <p>21 impact."</p> <p>22 The new district that we just</p> <p>23 discussed, the district that is in Mecklenburg</p> <p>24 county, has a county line split to -- that is</p> <p>25 made for reasons of equalizing population,</p> <p style="text-align: right;">136</p>

<p>1 correct? There are more people in Mecklenburg 2 county than you can have in a single district. 3 A. That's correct. 4 Q. So that is an example of making a division of a 5 county for reason of equalizing population; is 6 that correct? 7 A. Yes, sir. 8 Q. So what's an example of dividing a county for 9 consideration of incumbency? 10 A. In Guilford county, Representative Mark Walker 11 and Representative Alma Adams both had homes in 12 Guilford county, and we were tempted not to put 13 them in the same district. So that's an example 14 of that. 15 Q. And so in consideration of their -- and I'm 16 sorry, the political parties of those 17 individuals? 18 A. Representative Adams is a Democrat. 19 Representative Walker is a Republican. 20 Q. And so the consideration of their incumbency 21 results in a county line split in Guilford 22 county? 23 A. Yes, sir. 24 Q. And where that county line split occurs in 25 Guilford county, there are presumably whole VTDs</p> <p style="text-align: right;">137</p>	<p>1 So whatever date that was, that's when that was 2 discovered. It was not known before then. 3 MR. FARR: Excuse me. Do you mind if 4 we take a break. 5 MR. THORPE: No. Understood. 6 MR. FARR: Thank you. 7 THE VIDEOGRAPHER: Off record at 8 2:22 p.m. 9 (Brief Recess.) 10 THE VIDEOGRAPHER: On record at 11 2:37 p.m. 12 BY MR. THORPE: 13 Q. Representative Lewis, we had been discussing the 14 2016 Contingent Congressional Plan Committee 15 Adopted Criteria that were adopted by the joint 16 committee on the 16th of February -- 16th or 17 17th of February, and we were talking about 18 compactness. 19 The sentence we were discussing states 20 "Division of counties shall only be made for 21 reasons of equalizing population, consideration 22 of incumbency and political impact." 23 We had discussed an example of why such 24 a division would be made to equalize population 25 and an example of why such a division would be</p> <p style="text-align: right;">139</p>
<p>1 on both sides of that line? Or is there a VTD 2 split? 3 A. I do not recall if that's one of the VTDs that 4 had to be split. And I'll tell you why, if I 5 may. 6 When Dr. Hofeller -- by this point we 7 got this map here was able to load the map on 8 the General Assembly's computer and we had the 9 wrong address for Representative Walker, so 10 obviously you can't move where he lives. So we 11 changed -- we either changed a whole VTD or that 12 might have been one of the ones we had to 13 divide. I just don't remember. By this point 14 it was kind of fast and furious. 15 Q. And based on Dr. Hofeller's testimony, that 16 change that you just explained to deal with that 17 incumbency issue was the only change to the map 18 that Dr. Hofeller showed you in your meeting the 19 previous Friday or Saturday in the map that was 20 ultimately enacted; is that correct? 21 A. No. This -- the Walker-Adams double bunk 22 situation was not discovered until the map was 23 loaded on the state computer, and that occurred 24 on -- I apologize, I've lost my calendar now. 25 That occurred after the criteria were adopted.</p> <p style="text-align: right;">138</p>	<p>1 made for consideration of incumbency. 2 What is an example of a division of 3 county that would be made for political impact? 4 A. I don't know. And to be clear, the only reason 5 a county would be divided is the one-person, 6 one-vote rule. 7 There are 83 counties that aren't 8 divided. I don't know exactly where 9 Dr. Hofeller divided a county to give you an 10 example of that. 11 Q. Now, you state that the only reason a county 12 would be divided would be for a one-person, 13 one-vote rule, but there was in fact an 14 amendment offered in the committee that would 15 have reduced this sentence to just that and that 16 amendment was rejected, correct? 17 A. I don't remember. 18 Q. Okay. So if we can look at -- this is 19 Exhibit 35. If you'll look at the page at the 20 bottom that says DEF 00025. 21 A. I have it. 22 Q. Senator Dan Blue offered an amendment that would 23 have had that exact sentence read: 24 "Division of counties shall only be 25 made for reasons of equalizing population</p> <p style="text-align: right;">140</p>

<p>1 and for reasons of complying with federal 2 law."</p> <p>3 That amendment was -- if you look at 4 the next page -- rejected 23-11, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. If what you just said is true and the only 7 reason that counties would ever be divided is 8 for equalizing population, why was that 9 amendment rejected?</p> <p>10 MR. FARR: I object to --</p> <p>11 BY MR. THORPE:</p> <p>12 Q. Why did you vote against that amendment?</p> <p>13 MR. FARR: I don't object to that.</p> <p>14 THE WITNESS: The way the original 15 criteria was written, it specified equalizing 16 population, which is one-person, one-vote, 17 consideration of incumbency and political 18 impact.</p> <p>19 I voted against that amendment because 20 I knew the next factor was going to be 21 incumbency, so...</p> <p>22 BY MR. THORPE:</p> <p>23 Q. And you knew that division of counties was 24 necessary for incumbency?</p> <p>25 A. So division of county is necessary to equalize</p> <p style="text-align: right;">141</p>	<p>1 of Congress are not paired with another 2 incumbent in one of the new districts 3 conducted in the 2016 Contingent 4 Congressional Plan."</p> <p>5 What is required of the map maker -- 6 what did you intend to require of the map maker 7 in stating that reasonable efforts shall be 8 made?</p> <p>9 A. If it were possible to comply with all the 10 criteria and not have to put two incumbents in 11 the same district, then that would have been the 12 preferred method.</p> <p>13 Q. Did you give Dr. Hofeller any instruction of how 14 to rank the different criterion in terms of 15 whether it is more okay to violate one than 16 another?</p> <p>17 A. No.</p> <p>18 Q. Did you give Dr. Hofeller any tools or 19 mechanisms by which to weight the criteria 20 relative to one another?</p> <p>21 A. No.</p> <p>22 Q. Did you indicate to Dr. Hofeller that they 23 should all be weighed equally?</p> <p>24 A. Yes.</p> <p>25 Q. Do you consider incumbency as it's defined in</p> <p style="text-align: right;">143</p>
<p>1 population. The consideration of where that can 2 be made is for consideration of incumbency or 3 for political impact.</p> <p>4 Q. And my question is: What was your rationale for 5 including the phrase "and political impact" in 6 this sentence?</p> <p>7 A. Because -- forgive me for interrupting you. 8 Because I believe you ought to be 9 honest in the work that you are doing. I've 10 already said in this deposition that I believe 11 every choice that we make is in some way 12 political, and I'm -- this simply acknowledges 13 that Dr. Hofeller may have chosen to divide a 14 county in a certain way because of the political 15 impact of the districts contained therein.</p> <p>16 Q. Did you evaluate -- at the time that this was 17 voting on in committee, had you evaluated 18 whether any of the county splits in the 2016 19 plan divided counties based on political impact?</p> <p>20 A. I don't -- I don't remember.</p> <p>21 Q. Okay. Let's talk about incumbency, which we've 22 already discussed a little bit.</p> <p>23 From that second sentence: 24 "However, reasonable efforts shall 25 be made to ensure that incumbent members</p> <p style="text-align: right;">142</p>	<p>1 this adopted criteria document to be a 2 traditional redistricting criteria?</p> <p>3 A. Yes.</p> <p>4 Q. Did you consider incumbency as it's defined in 5 this document during the redistricting in 2011?</p> <p>6 A. Yes.</p> <p>7 Q. How did you consider incumbency during 8 redistricting in 2011?</p> <p>9 A. We were aware of where the incumbents lived and 10 made effort to not combine one district with two 11 incumbents.</p> <p>12 Q. What efforts were taken in that regard in 2011?</p> <p>13 A. I would say substantial efforts were taken in 14 2011. As you know, what I refer to as the 15 enacted plan or the baseline plan, whatever, is 16 Rucho-Lewis 2A. Rucho-Lewis 1, I don't think 17 there were any incumbents that were combined.</p> <p>18 There were a variety of reasons why the 19 changes to the map were necessary and that 20 created a situation of double bunking some 21 incumbents, but our first stab at it I don't 22 think double bunk any of them.</p> <p>23 Q. The plan actually enacted double bunked how 24 many?</p> <p>25 A. I didn't remember. I think I heard in this room</p> <p style="text-align: right;">144</p>

<p>1 yesterday it was four.</p> <p>2 Q. And in addition to incumbency, one of the</p> <p>3 considerations in the 2011 plan was also</p> <p>4 partisan advantage; is that correct?</p> <p>5 A. In the 2011 plan?</p> <p>6 Q. Yes.</p> <p>7 A. Yes.</p> <p>8 Q. And how did you weigh the consideration of</p> <p>9 partisan advantage against the consideration of</p> <p>10 incumbency?</p> <p>11 A. In 2011?</p> <p>12 Q. '11.</p> <p>13 A. I don't know that it would be accurate to say</p> <p>14 they were weighed equally, but I don't remember</p> <p>15 making a conscious choice to put one over the</p> <p>16 other.</p> <p>17 Q. What is the interest of the state or the</p> <p>18 legislature in incumbents being reelected to</p> <p>19 Congress in your view?</p> <p>20 MR. FARR: I'll object to the extent</p> <p>21 that calls for a legal opinion, but otherwise</p> <p>22 you can answer.</p> <p>23 THE WITNESS: You know, there's a lot</p> <p>24 of people -- just like in independent</p> <p>25 redistricting, there's -- a lot of people have</p> <p style="text-align: right;">145</p>	<p>1 that you give on the floor of the House of</p> <p>2 Representatives.</p> <p>3 So let me introduce as Exhibit 40 --</p> <p>4 A. May I put this book away, please.</p> <p>5 Q. Yes.</p> <p>6 -- transcripts from the House floor.</p> <p>7 (WHEREUPON, Plaintiffs' Exhibit 40 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. THORPE:</p> <p>10 Q. This hearing occurs on the 19th, and at this</p> <p>11 time the committees --</p> <p>12 MR. FARR: Which tab?</p> <p>13 MR. THORPE: I'm sorry. It's 2016/2/19</p> <p>14 Session One.</p> <p>15 MR. FARR: Does it say Floor Session</p> <p>16 One?</p> <p>17 MR. THORPE: Floor Session One,</p> <p>18 11:30 a.m.</p> <p>19 MR. FARR: Yeah. I think, David,</p> <p>20 that's Tab 3.</p> <p>21 THE WITNESS: I have it before me.</p> <p>22 BY MR. THORPE:</p> <p>23 Q. You are at this point testifying to the full</p> <p>24 house on the criteria used in the 2016</p> <p>25 redistricting; is that correct?</p> <p style="text-align: right;">147</p>
<p>1 strong opinions about term limits and they think</p> <p>2 incumbency is not something that is valued.</p> <p>3 I can tell you as somebody who has been</p> <p>4 around a while, knowing how to get things done</p> <p>5 for the people that you represent is important.</p> <p>6 So to the extent that I think -- for</p> <p>7 instance, in District 1, if he's not currently,</p> <p>8 he's the immediate past, I know Representative</p> <p>9 Butterfield is the chair of the Congressional</p> <p>10 Black Caucus. That's certainly a very</p> <p>11 influential spot. I know in the 10th,</p> <p>12 Representative McHenry either is or has just</p> <p>13 come off being the chair of the banking</p> <p>14 committee. These things are important.</p> <p>15 I do think incumbency is -- is a worthy</p> <p>16 traditional consideration in redrawing of lines.</p> <p>17 BY MR. THORPE:</p> <p>18 Q. So one of the factors that you've cited as to</p> <p>19 why is the seniority of members in the House?</p> <p>20 A. That was -- yeah, I think that's a fair</p> <p>21 characterization.</p> <p>22 Q. I want to move on from the adopted criterion</p> <p>23 and, given our time constraints, I'm actually</p> <p>24 going to skip forward a little bit in the</p> <p>25 two-week period of the drafting to the testimony</p> <p style="text-align: right;">146</p>	<p>1 A. House rules would refer to it as debating the</p> <p>2 bill, but, yes, largely it's the same thing.</p> <p>3 Q. You are speaking to the House. And at this time</p> <p>4 has the map been released?</p> <p>5 A. Yes.</p> <p>6 Q. And the map that has been released is based on</p> <p>7 criteria that at that time have been adopted and</p> <p>8 are publicly available?</p> <p>9 A. Yes.</p> <p>10 Q. And you are speaking to encourage passage of the</p> <p>11 bill; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. I want to go to Page 5.</p> <p>14 A. Yes, sir, I'm there.</p> <p>15 Q. On Line 3 --</p> <p>16 MR. THORPE: Does somebody have a</p> <p>17 highlighted copy?</p> <p>18 THE WITNESS: I do.</p> <p>19 MS. MACKIE: Can we switch those out?</p> <p>20 THE WITNESS: Well, that part's not</p> <p>21 highlighted but certain parts are.</p> <p>22 (Discussion held off the reporter's</p> <p>23 written record.)</p> <p>24 THE WITNESS: So we're returning to</p> <p>25 Section 3, page --</p> <p style="text-align: right;">148</p>

<p>1 BY MR. THORPE: 2 Q. Page 5. 3 A. Yes, sir, I'm there. 4 Q. And we are really staying on the topic of 5 partisan advantage. 6 So beginning on Line 3, a further -- 7 you are explaining the criteria. 8 "A further criteria was partisan 9 advantage. We believe this map will 10 produce an opportunity to elect 10 11 Republican members of Congress, but make 12 no mistake, this is a weaker map than 13 the enacted plan in that respect." 14 I sort of want to take that sentence in 15 two parts. 16 What do you mean when you say "an 17 opportunity to elect 10 Republican members of 18 Congress"? 19 A. Past election results are a pretty good 20 indicator of future performance. 21 Q. And you have just explained that past election 22 results were used in building these districts, 23 correct? 24 I'm sorry. In your actual speech 25 before the House on Page 4, you say:</p> <p style="text-align: right;">149</p>	<p>1 Q. Okay. So to break that up a little bit, how do 2 you define a strong opportunity? 3 A. In Congressional District 4, I am personally 4 aware that Orange county is typically a solid 5 Democratic stronghold. The whole VTD precincts 6 that connect through Durham I think fit that 7 description as well. And based on only the 8 ocular test and knowing where the state house 9 districts kind of fall, there appear to be 10 Democratic areas in Wake. 11 I would say District 4 is a strong 12 opportunity for Democrats to elect or for the 13 people to elect a Democrat to congress. 14 Q. Do you think there is any opportunity for the 15 Republicans to elect a member to congress from 16 District 4? 17 A. I think it would be a real challenge. It would 18 have to be somebody -- and again, I don't want 19 to speculate with the time we have. I think the 20 right person from Orange county may be 21 affiliated with the university might could make 22 a stab at it. 23 Q. In your review of historic election data in 24 evaluating what became the 2016 Contingent 25 Congressional Map, did you see any evidence in</p> <p style="text-align: right;">151</p>
<p>1 "The stat pack attached to the maps 2 placed on each one of your desks show 3 which election results were used in 4 building these districts." 5 A. Yes, sir, I see that. 6 Q. So when you say an opportunity to elect, you 7 mean looking at the likely outcomes based on 8 past election results? 9 A. Yes. Yes. 10 Q. And did you use any metric or discuss any metric 11 to determine how competitive a seat needs to be 12 in order to consider that one party or another 13 has an opportunity to elect a member to that 14 seat? 15 A. None other than looking at the historic data. I 16 wish I were smart enough to know another way, 17 but I don't. 18 Q. And so looking at that historic data, how many 19 seats would you say that -- based on the 20 information you had in front of you at the time 21 the Democratic Party had an opportunity to elect 22 members of Congress too? 23 A. I think they had a strong opportunity to elect 24 members to three of the seats and a lesser 25 opportunity to elect members in the other seats.</p> <p style="text-align: right;">150</p>	<p>1 the election results that a Republican could win 2 District 4? 3 A. Not that I recall. 4 Q. What other districts were you referring to as 5 strong Democratic districts in your earlier 6 answer? 7 A. Well, District 1 is in a part of the state that 8 is traditionally Democratic. I believe all the 9 seats in the North Carolina House that are 10 contained within District 1 have elected a 11 Democrat. And I know the county of Durham 12 itself is a pretty strong Democratic county, so 13 I would say District 1 is an opportunity -- 14 pretty strong opportunity for the Democrats to 15 elect a Democrat to congress. 16 Q. And you evaluated election returns from historic 17 elections to determine -- in part to determine 18 that it is a strong Democratic district? 19 A. I did. 20 Q. What's the third strong Democratic district? 21 A. The third strongest would be the 12th in 22 Mecklenburg. The -- while there is some 23 Republican strength there, I think there are 24 maybe one or two Republican state House seats 25 contained in there. If -- there's like four or</p> <p style="text-align: right;">152</p>

<p>1 five Democratic state seats so I would assume</p> <p>2 state house seats. So I would assume -- and</p> <p>3 based on past performance that that would be a</p> <p>4 pretty good opportunity for the Democrats to</p> <p>5 elect a Democrat to congress.</p> <p>6 Q. What would you include in the category of lesser</p> <p>7 opportunities for -- and that's your phrasing --</p> <p>8 for Democratic members of Congress to win a</p> <p>9 congressional seat?</p> <p>10 A. Okay. Well, you take District 9, for instance.</p> <p>11 Anson, Richmond, Scotland and Robeson and</p> <p>12 Bladen, frankly, are traditionally Democratic</p> <p>13 counties. They are offset in large part by the</p> <p>14 big population of Union county and the area of</p> <p>15 Mecklenburg county, but I can tell you the area</p> <p>16 of Cumberland county that is contained in</p> <p>17 District 9, if you evaluated state house seats</p> <p>18 are all three Democratic seats.</p> <p>19 So I would say that the -- even though</p> <p>20 the historic results gave an opportunity for the</p> <p>21 Republicans to win nine, it's by no means a slam</p> <p>22 dunk for them to win nine.</p> <p>23 Q. You did evaluate historic election results as to</p> <p>24 District 9 in looking at this map with</p> <p>25 Dr. Hofeller, or at least before the enactment</p> <p style="text-align: right;">153</p>	<p>1 the right Democratic candidate to be able to run</p> <p>2 a competitive race.</p> <p>3 Q. That district also contains a county line split,</p> <p>4 correct?</p> <p>5 A. Yes, sir, it does.</p> <p>6 Q. Did you evaluate the performance of voter</p> <p>7 districts in Pitt county?</p> <p>8 A. I don't remember if I looked at them</p> <p>9 specifically or not.</p> <p>10 Q. But consistent with your instructions,</p> <p>11 Dr. Hofeller could move VTDs either into or out</p> <p>12 of District 3 in Pitt county for political</p> <p>13 impact, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Are there any additional districts where a</p> <p>16 Democratic candidate has an opportunity to be</p> <p>17 elected?</p> <p>18 A. The next one would be the 6th district: Lee</p> <p>19 county. While it has one Democrat and one</p> <p>20 Republican in the state House is a pretty evenly</p> <p>21 divided county as far as how they perform voting</p> <p>22 wise. Chatham is a solid Democratic county.</p> <p>23 The area of the 6th that is in Guilford county</p> <p>24 is a pretty solid Democratic base.</p> <p>25 So I would say the 6th also provides an</p> <p style="text-align: right;">155</p>
<p>1 of the map, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Did you evaluate the VTDs on the county line</p> <p>4 splits in Mecklenburg, Cumberland and Bladen</p> <p>5 counties?</p> <p>6 A. I don't remember specifically if I looked at</p> <p>7 them or not.</p> <p>8 Q. Consistent with your instructions to him, was</p> <p>9 Dr. Hofeller allowed under your instructions to</p> <p>10 move the county line -- the VTDs bordering the</p> <p>11 county line into or out of District 9 consistent</p> <p>12 with the instructions that you gave him for</p> <p>13 political impact?</p> <p>14 A. That would have been one of the criteria that he</p> <p>15 could have done it, yes.</p> <p>16 Q. So that is a district that -- well, what's the</p> <p>17 next district that you would consider a lesser</p> <p>18 opportunity for a Democratic candidate?</p> <p>19 A. The 3rd -- yes, the 3rd. If you'll look at what</p> <p>20 we refer to in North Carolina as the finger</p> <p>21 counties, which are Chowan, Perquimans,</p> <p>22 Pasquotank, Camden, Currituck, those are</p> <p>23 traditionally Democratic areas as well. Hyde</p> <p>24 county traditionally Democrat. Greene, Lenoir.</p> <p>25 The 3rd is certainly an opportunity for</p> <p style="text-align: right;">154</p>	<p>1 opportunity for a Democrat to be elected to</p> <p>2 Congress.</p> <p>3 Q. And as we discussed before, Guilford county also</p> <p>4 has a county line split, and that split, you</p> <p>5 testified earlier, addresses an incumbency issue</p> <p>6 for Representatives Walker and Adams; is that</p> <p>7 correct?</p> <p>8 A. That split is necessary to comply with the</p> <p>9 one-person, one-vote and apparently also</p> <p>10 separates Walker and Adams.</p> <p>11 Q. Did you evaluate the partisan performance of</p> <p>12 individual VTDs in Guilford county?</p> <p>13 A. I did when we made the change to take Walker and</p> <p>14 Adams out of the same district. And, frankly,</p> <p>15 doing that made the 6th, to the best of my</p> <p>16 memory, a -- the VTD that got included was a</p> <p>17 little bit of a higher performing Democratic VTD</p> <p>18 than the one that we took out.</p> <p>19 Q. And consistent with the districts that we</p> <p>20 earlier discussed, Dr. Hofeller, while still</p> <p>21 complying with all the instructions that you</p> <p>22 gave him, was able to or allowed to move</p> <p>23 individual VTDs from District 6 to District 13</p> <p>24 in Guilford county, or vice versa, for political</p> <p>25 impact; is that correct?</p> <p style="text-align: right;">156</p>

<p>1 A. Yes.</p> <p>2 Q. Are there other districts where Democrats had an</p> <p>3 opportunity to be elected?</p> <p>4 A. You know, it's really hard to speculate. I've</p> <p>5 already gone through almost half the map.</p> <p>6 The 11th, which is sort of the mountain</p> <p>7 district, has almost always -- I stand corrected</p> <p>8 from something I said this morning.</p> <p>9 I did realize that Heath Shuler briefly</p> <p>10 represented that area, but for most of my</p> <p>11 lifetime it's been a Republican stronghold just</p> <p>12 based on past vote. The 10th is the same way.</p> <p>13 So those are just -- those people just vote</p> <p>14 Republican. The 13th, the same way.</p> <p>15 The 8th -- the Hoke incumbent part of</p> <p>16 the 8th are a little bit more inclined to vote</p> <p>17 Democratic, but typically Rowan and Cabarrus and</p> <p>18 Stanley and Montgomery typically vote</p> <p>19 Republican. So I would say that was probably a</p> <p>20 lesser opportunity for the Democrats to win.</p> <p>21 The 7th I say would be a lesser</p> <p>22 opportunity for them to win.</p> <p>23 The 2nd -- the 2nd is a little more</p> <p>24 competitive, and I probably should have</p> <p>25 mentioned that.</p> <p>157</p>	<p>1 political impact from one district to another</p> <p>2 district; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And did you give Dr. Hofeller instructions to do</p> <p>5 so consistent with the partisan advantage</p> <p>6 criteria that was later adopted?</p> <p>7 A. Along with the other criteria, yes.</p> <p>8 Q. The second part of the sentence is "make no</p> <p>9 mistake, this is a weaker map than the enacted</p> <p>10 plan in that respect."</p> <p>11 What's the basis for that statement?</p> <p>12 A. Again, looking at historical data, this map is</p> <p>13 much weaker as far as a Republican-performing</p> <p>14 district in the 9th. It's much weaker in the</p> <p>15 6th. It's much weaker in the 2nd.</p> <p>16 So I don't remember, frankly, if the</p> <p>17 11th or the 10th changed much, but in terms of</p> <p>18 districts that had historical performance --</p> <p>19 performing for Republicans, if I had access to</p> <p>20 that stuff I could show you which ones, but this</p> <p>21 is a weaker map than -- if you look district by</p> <p>22 district only at historical data, in many of the</p> <p>23 districts, historical data would have shown a</p> <p>24 stronger Republican performance level than the</p> <p>25 one will for this one.</p> <p>159</p>
<p>1 The Wake county area is not necessarily</p> <p>2 a consistent historic Republican voting</p> <p>3 precinct. Certainly Nash county is not.</p> <p>4 Harnett county, my own, is pretty -- is</p> <p>5 a county I would classify as trending Republican</p> <p>6 but it's not rock solid. So the right candidate</p> <p>7 in District 2 could make an impact as well</p> <p>8 Q. Now, just as a -- we're both looking at</p> <p>9 Deposition Exhibit 25. Does any district under</p> <p>10 the 2016 Contingent Congressional Plan not</p> <p>11 contain a county split?</p> <p>12 A. Does any district not contain a county split?</p> <p>13 Q. Is there any district without a county split?</p> <p>14 A. 12. Mecklenburg is a county that has two, but</p> <p>15 the 12th does not contain a split.</p> <p>16 Q. That's correct. Thank you for the correction.</p> <p>17 And the 12th is exactly the size that</p> <p>18 the 12th needs to be because of the equal</p> <p>19 population requirement, correct?</p> <p>20 A. Correct. But the other answer to your question</p> <p>21 is I believe all the other districts contain a</p> <p>22 county split.</p> <p>23 Q. Right. And the followup to that is where a</p> <p>24 district contains a county split, there is the</p> <p>25 opportunity to move individual VTDs based on</p> <p>158</p>	<p>1 Q. Under the 2011 map?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Are there any districts that under the 2016 map</p> <p>4 show a stronger Republican performance than the</p> <p>5 2011 map?</p> <p>6 A. Not that I recall.</p> <p>7 Q. And from that you have characterized the map as</p> <p>8 a whole as a weaker map in this statement?</p> <p>9 A. Yes.</p> <p>10 Q. If we could turn to Page 22, we're going to talk</p> <p>11 about the 11th district again for a moment.</p> <p>12 On Line 14, you say:</p> <p>13 "The 11th, for instance, the</p> <p>14 mountain district, really I think the</p> <p>15 only change that was made there had to do</p> <p>16 with trying to equalize some population</p> <p>17 because additional population had been</p> <p>18 pushed west, if you will, from the 10th</p> <p>19 and from the 5th."</p> <p>20 So those are the districts that border</p> <p>21 11, and I presume that means 11 geographically</p> <p>22 has to get a little bit smaller because it's got</p> <p>23 more population; is that correct?</p> <p>24 MR. FARR: If you know.</p> <p>25 BY MR. THORPE:</p> <p>160</p>

<p>1 Q. What does it mean to try to equalize some 2 population because additional population had 3 been pushed west? 4 A. Oh, so the Harris court didn't like the 2011 5 drawing of the 12th. And essentially the 12th, 6 think of it as a wall that basically ran through 7 the state. So when that was gone, it let the -- 8 some of the population could flow west, and I 9 think that's what I'm trying to say there. 10 Q. And that population that had been in the 12th 11 that extended up the state, some of it goes to 12 the adjoining -- 13 A. Yes, sir. 14 Q. Okay. So what changes did you observe to the 15 11th in the 2016 plan as a result? 16 A. I really don't recall. As I told you earlier 17 today, the reason that's probably in my remarks 18 is we made an effort to see if we could keep 19 Buncombe county together. We could not figure 20 out how to do that, and so it was probably just 21 on my mind. 22 I was probably trying to tell the 23 members of the House that in terms of looking 24 for the changes to the maps, 11 and 10 and 5 25 were probably as pretty close to the old map or</p> <p style="text-align: right;">161</p>	<p>1 correct? 2 A. Yes. 3 Q. And it was drawn by Dr. Hofeller on your 4 instructions prior to the written criteria being 5 adopted by the Joint Redistricting Committee, 6 correct? 7 A. Correct. 8 And if I could pause one moment, the 9 question you asked me before this, the only 10 change that was made after the criteria was 11 adopted was the Guilford county change. So 12 there was that one change made. 13 Q. Other than the Guilford county -- thank you for 14 that. 15 Other than the Guilford county change, 16 the map being debated and voted on in this 17 hearing had been drawn prior to the Joint 18 Redistricting Committee meeting? 19 A. That's right. 20 Q. And it had been drawn prior to the criteria that 21 were voted on by the Joint Redistricting 22 Committee -- 23 A. That's right. 24 Q. -- being -- I'm sorry, two separate questions. 25 Prior to that criteria actually being</p> <p style="text-align: right;">163</p>
<p>1 the enacted map as -- or more close -- more 2 closely resembling them than the other -- the 3 other districts are. 4 Q. Whatever changes happened in District 11 in the 5 2016 map, they would have had to happen in 6 Buncombe county, correct? 7 A. Sir, I don't have the enacted map in front of 8 me. That sounds right, but I'm not -- I don't 9 have the 2011 map, but that's my recollection. 10 My recollection is that is basically the same. 11 Q. Did you evaluate the partisan impact of whatever 12 changes occurred in Buncombe county? 13 A. Yes. 14 Q. If you could turn to Page 29. In Line 6 you 15 say: 16 "To be clear, the map that you have 17 before you was drawn using criteria that 18 was openly debated and adopted by the 19 Joint Redistricting Committee." 20 You're making this statement on the 21 19th as the House is considering whether to 22 adopt the bill with the new districts? 23 A. Yes. 24 Q. The map that is being evaluated was drawn prior 25 to the Joint Redistricting Committee meeting,</p> <p style="text-align: right;">162</p>	<p>1 written down? 2 MR. FARR: Objection to the form. 3 THE WITNESS: I believe that to be 4 correct. 5 BY MR. THORPE: 6 Q. If you would turn to 31. 7 MR. FARR: Page 31? 8 MR. THORPE: Yes. 9 BY MR. THORPE: 10 Q. You explain -- actually, beginning at the bottom 11 of Page 30 -- that you look at election results 12 rather than political registration because 13 election outcomes are much better predictors of 14 how people actually vote than partisan 15 registration is. You then discuss unaffiliated 16 voters in North Carolina, which is similar to a 17 discussion we had before. 18 Do you consider for the likely partisan 19 performance of any district the number of 20 unaffiliated voters in a given district? 21 A. I didn't in drawing this map. I can't say that 22 I don't from time to time look at things like 23 that. 24 Q. But for purposes of drawing this map, 25 registration data made no difference whatsoever?</p> <p style="text-align: right;">164</p>

<p>1 A. That's right.</p> <p>2 Q. The sole political data used were the historic</p> <p>3 election results?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And where you say on Line 15 "I freely</p> <p>6 acknowledge that I sought partisan advantage as</p> <p>7 based on the criteria in drawing this map," you</p> <p>8 stand by that statement?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Number -- Page Number 32, Line 16. I actually</p> <p>11 want to discuss a couple different statements.</p> <p>12 If you still have the committee transcripts in</p> <p>13 front of you, we're going to talk about</p> <p>14 something from that too, but on Line 16 you say:</p> <p>15 "But for the criteria adopted by</p> <p>16 the committee which instructed the map</p> <p>17 drawers to do certain things like try to</p> <p>18 maintain compactness, try to make -- you</p> <p>19 know, take incumbency into account, try</p> <p>20 to make the districts look more compact,</p> <p>21 be more compact, keep more counties</p> <p>22 compact, we could have been much more</p> <p>23 aggressive partisan-wise trying to obtain</p> <p>24 a map that would elect 11 Republicans.</p> <p>25 But you can't really do that if you</p> <p>165</p>	<p>1 testimony?</p> <p>2 A. I stand by the testimony because, as I said, if</p> <p>3 you follow all the criteria, I don't know how</p> <p>4 you would create a different map than what we</p> <p>5 have.</p> <p>6 Q. Did you discuss whether it was possible either</p> <p>7 with Senator Rucho -- did you discuss with</p> <p>8 Senator Rucho whether it was possible to design</p> <p>9 an 11-2 map?</p> <p>10 A. Never seriously, but yes.</p> <p>11 Q. What does that mean?</p> <p>12 A. I never devoted much time because we didn't have</p> <p>13 it, but if your sole goal was to create a</p> <p>14 political draw, you could find a way to group</p> <p>15 enough people that would create Republican</p> <p>16 opportunity districts, if you will, but you</p> <p>17 would have to violate all the other criteria</p> <p>18 that we have.</p> <p>19 You certainly couldn't have kept 83</p> <p>20 counties intact. You couldn't only have 12</p> <p>21 split VTDs. So if -- you know, the gerrymander</p> <p>22 is what's at issue here.</p> <p>23 Certainly we knew also that the Harris</p> <p>24 court was going to look at this map, and when</p> <p>25 they look at this map, what I think they see is</p> <p>167</p>
<p>1 simply consider partisanship as a part</p> <p>2 of the criteria, which is what we did."</p> <p>3 That was your testimony before the full</p> <p>4 House, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And before the Joint Committee --</p> <p>7 MR. FARR: Is that Exhibit 34?</p> <p>8 MR. THORPE: Yes.</p> <p>9 MR. FARR: What's the date?</p> <p>10 MR. THORPE: The 16th.</p> <p>11 MR. FARR: Which would be Tab 1.</p> <p>12 BY MR. THORPE:</p> <p>13 Q. On Page 50, you are asked a question by Senator</p> <p>14 McKissick that actually begins on Page 49. It</p> <p>15 is discussing the partisan advantage criteria.</p> <p>16 And you respond to say "I propose" -- this</p> <p>17 begins on Line 7.</p> <p>18 "I propose that we draw the maps to</p> <p>19 give a partisan advantage to 10</p> <p>20 Republicans and 3 Democrats because I do</p> <p>21 not believe it's possible to draw a map</p> <p>22 with 11 Republicans and 2 Democrats."</p> <p>23 Do you recall that statement?</p> <p>24 A. Yes.</p> <p>25 Q. And in both circumstances you stand by that</p> <p>166</p>	<p>1 whole counties and lines that make sense, and we</p> <p>2 didn't want to take any chances to do anything</p> <p>3 extreme that would throw it out.</p> <p>4 So again, all the criteria are</p> <p>5 followed, and if all the criteria are followed,</p> <p>6 I don't see how you would make an 11 -- how you</p> <p>7 would provide opportunities for 11 Republicans,</p> <p>8 perhaps, to win.</p> <p>9 Q. So in your view, constrained by the other</p> <p>10 criteria, 10-3 is the best you can do?</p> <p>11 A. I don't know if I would use the word</p> <p>12 "constrained." I would say consistent with all</p> <p>13 the criteria that I provided Hofeller and the</p> <p>14 committee agreed with and adopted and</p> <p>15 harmonizing those together, then the map is what</p> <p>16 it is.</p> <p>17 Q. Constrained by the other criteria, the</p> <p>18 opportunity to elect, as you defined it, 10</p> <p>19 Republicans to congressional seats is the</p> <p>20 maximum number of seats that the partisan</p> <p>21 advantage criteria will allow?</p> <p>22 MR. FARR: I'm going to object to that</p> <p>23 question.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I believe I already have,</p> <p>168</p>

<p>1 but I'll say yes.</p> <p>2 BY MR. THORPE:</p> <p>3 Q. Did you consider any maps that were likely to</p> <p>4 elect 9 Republicans and 4 Democrats?</p> <p>5 A. Yes.</p> <p>6 Q. When did you consider those maps?</p> <p>7 A. One of the scenarios that I looked at with</p> <p>8 Dr. Hofeller would have accomplished that, but</p> <p>9 it would have been at the expense of splitting</p> <p>10 more counties and more VTDs.</p> <p>11 Q. You did not evaluate any maps with an equal</p> <p>12 number of county or VTD splits that would have</p> <p>13 elected fewer -- would have likely elected fewer</p> <p>14 than 10 Republicans?</p> <p>15 A. I'm sorry. I don't understand the question.</p> <p>16 You just asked me if we looked at a 9-4</p> <p>17 map and I said we did. So, yes, we looked at a</p> <p>18 map that gave us a stronger likelihood of</p> <p>19 electing 9 Republicans. If you're going to --</p> <p>20 you know, but it would have violated the other</p> <p>21 criteria.</p> <p>22 Q. So the only change to my second question was:</p> <p>23 Did you evaluate any maps with an equal number</p> <p>24 of county and VTD splits to this map?</p> <p>25 A. No. And I'm sorry, I misunderstood.</p> <p>169</p>	<p>1 this is on Page 34.</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- you sort of expand on what you have</p> <p>4 previously discussed as a rationale for the</p> <p>5 partisan advantage criteria. On Line 16 you</p> <p>6 say:</p> <p>7 "I will tell you that the committee</p> <p>8 adopted the criteria -- adopt criteria,</p> <p>9 one of which was to seek partisan</p> <p>10 advantage for the Republicans. Now, if</p> <p>11 you ask me personally if I think that is</p> <p>12 a good thing, I will tell you I do.</p> <p>13 "I think you are a great man."</p> <p>14 You are referring to the person asking</p> <p>15 the question.</p> <p>16 "I think you are a fine public</p> <p>17 servant. I think electing Republicans is</p> <p>18 better than electing Democrats. So I</p> <p>19 drew this map in a way to help foster</p> <p>20 what I think is better for the country."</p> <p>21 Now, earlier you testified that</p> <p>22 partisan politics is just an inevitable</p> <p>23 consideration in redistricting. Here it seems</p> <p>24 like you are testifying that maximizing</p> <p>25 Republican advantage has a separate benefit.</p> <p>171</p>
<p>1 Q. No, that's okay.</p> <p>2 Back in your House testimony --</p> <p>3 A. May I ask my attorney a question. I don't mind</p> <p>4 you listening to what I'm going to say.</p> <p>5 It might be possible to ask my staff,</p> <p>6 Mark, to see if the meeting with the governor's</p> <p>7 people can be pushed back. I know he's not</p> <p>8 finished. I don't mind trying to get this done</p> <p>9 today.</p> <p>10 MR. FARR: How much time do you think</p> <p>11 you need?</p> <p>12 MR. THORPE: Significant enough that --</p> <p>13 MR. BONDURANT: I think you probably</p> <p>14 ought to go with the meeting and we'll split it</p> <p>15 and come back if we need to.</p> <p>16 THE WITNESS: Yes, sir, I'll be more</p> <p>17 than glad to do that.</p> <p>18 I'm sorry, I've tried to answer the</p> <p>19 questions that you have, and I'm sorry that I</p> <p>20 asked you to stop them.</p> <p>21 MR. BONDURANT: You've done the best</p> <p>22 you can. We work together on this.</p> <p>23 BY MR. THORPE:</p> <p>24 Q. In your House floor session testimony, which is</p> <p>25 from the 19th and that we were previously in --</p> <p>170</p>	<p>1 MR. FARR: Objection to the form.</p> <p>2 I also would like to point out that</p> <p>3 he's referring to Representative Martin. I'd</p> <p>4 like to make that clear because I think he's a</p> <p>5 great guy too.</p> <p>6 THE WITNESS: So would you ask the</p> <p>7 question again.</p> <p>8 BY MR. THORPE:</p> <p>9 Q. Does this testimony provide in your view a</p> <p>10 reason for partisan advantage as a criteria in</p> <p>11 the 2016 redistricting?</p> <p>12 A. I stand by this statement. I would point out</p> <p>13 only that it may have been said in a little more</p> <p>14 cavalier fashion than was dignified on the House</p> <p>15 floor.</p> <p>16 Representative Martin and I, although</p> <p>17 we're political adversaries, are personal</p> <p>18 friends. I've been to his home.</p> <p>19 This was more the kind of conversation</p> <p>20 that we should have had outside and not on the</p> <p>21 floor, but, yes, I mean, I stand by what I said.</p> <p>22 Q. And then on Page 37, Line 18, you're asked again</p> <p>23 by Representative Martin:</p> <p>24 "Are there any races that are not</p> <p>25 listed on these charts that the mapmakers</p> <p>172</p>

<p>1 considered?"</p> <p>2 And I assume that Representative Martin</p> <p>3 is there referring to the stat pack that</p> <p>4 contains the basket of races we've been</p> <p>5 discussing; is that correct?</p> <p>6 A. He was.</p> <p>7 Q. And your response is: "No, sir"?</p> <p>8 A. Which is accurate.</p> <p>9 Q. And you did not consider any other races and you</p> <p>10 did not instruct Dr. Hofeller to consider other</p> <p>11 races?</p> <p>12 A. Correct.</p> <p>13 Q. Did you instruct Dr. Hofeller to use all of the</p> <p>14 races that were provided in the stat pack?</p> <p>15 A. No, I did not.</p> <p>16 Q. At Line 3 of this same page, Representative</p> <p>17 Martin asks you:</p> <p>18 "Representative Lewis, would it be</p> <p>19 accurate to say that the mapmakers</p> <p>20 considered every one of the races that's</p> <p>21 listed in the charts that were presented</p> <p>22 at committee several times."</p> <p>23 And you respond: "Yes, sir."</p> <p>24 Is that correct?</p> <p>25 A. I did respond to that by saying "Yes, sir."</p> <p style="text-align: right;">173</p>	<p>1 (WHEREUPON, Plaintiffs' Exhibit 41 was</p> <p>2 marked for identification.)</p> <p>3 THE WITNESS: No, I'm fine.</p> <p>4 BY MR. THORPE:</p> <p>5 Q. So on Page 4, beneath the large block of space,</p> <p>6 you are quoted as saying:</p> <p>7 "I think partisanship is an</p> <p>8 inherent part of who we are, and I think</p> <p>9 it will always have some role in the</p> <p>10 decisions that we make and that includes</p> <p>11 redistricting. It should not be a</p> <p>12 predominant factor, but it will always</p> <p>13 be a factor. Whether you acknowledge it</p> <p>14 or not, it will always be a factor, and</p> <p>15 to not acknowledge that is either naive</p> <p>16 or dishonest."</p> <p>17 Were you accurately quoted in this</p> <p>18 article?</p> <p>19 A. Yes.</p> <p>20 Q. And do you stand by that statement?</p> <p>21 A. I do.</p> <p>22 Q. When you say it's an inherent part of who we</p> <p>23 are, what do you mean?</p> <p>24 A. We're all the sum of our parts. The collective</p> <p>25 being of my political lens that I apply to taxes</p> <p style="text-align: right;">175</p>
<p>1 Looking back, perhaps the answer would have been</p> <p>2 "I assume so" or "I think so."</p> <p>3 Q. When did you learn that not all the races listed</p> <p>4 in those charts were used in constructing the</p> <p>5 2016 maps?</p> <p>6 A. Well, to be candid, I don't know that I ever</p> <p>7 learned that. I'm just saying when I looked at</p> <p>8 the maps, to make it simpler for me,</p> <p>9 Dr. Hofeller would just turn on the Tillis-Hagan</p> <p>10 thing. I don't really know what he looked at.</p> <p>11 Q. You did not instruct and the written criteria do</p> <p>12 not instruct every one of the races to be used?</p> <p>13 A. That's correct.</p> <p>14 Q. You have testified a couple times today that</p> <p>15 partisanship is an inevitable part of the</p> <p>16 redistricting process.</p> <p>17 Is that a correct assessment of your</p> <p>18 testimony?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And -- well, I'll just -- if we could mark as</p> <p>21 Exhibit 41 a printout of a recent news article</p> <p>22 that I will ask you about a quote. And then</p> <p>23 this is on Page 4, but if you want to take a</p> <p>24 minute to read through the article, I have, of</p> <p>25 course, no objection.</p> <p style="text-align: right;">174</p>	<p>1 or to spending or to whatever is going to</p> <p>2 largely reflect the Republican label behind my</p> <p>3 name. So I -- when I make decisions, that is</p> <p>4 the honest way to reflect the lens or the method</p> <p>5 by which I make those decisions.</p> <p>6 Q. And how does that belief that it's an inherent</p> <p>7 part of who we are translate to the</p> <p>8 redistricting process that you reference in this</p> <p>9 quote?</p> <p>10 A. While you only divide -- you know, you've got to</p> <p>11 do the one-person, one-vote thing. It would be</p> <p>12 dishonest and naive of me to say that where you</p> <p>13 put a line in X county may not affect the</p> <p>14 balance of a congressional district. So if I</p> <p>15 have a different political philosophy or I have</p> <p>16 no political philosophy that I'm willing to</p> <p>17 acknowledge, still whatever you put a line for</p> <p>18 whatever purpose will have political impact.</p> <p>19 I just -- it would be easy -- believe</p> <p>20 me, I want to embrace and be able to say that I</p> <p>21 think the non-partisan thing is a great thing.</p> <p>22 People love to hear about that.</p> <p>23 I think it's more honest to say I'm</p> <p>24 going to follow the law, and I'm going to follow</p> <p>25 everything that's required of me by the law ,</p> <p style="text-align: right;">176</p>

<p>1 but if there is a -- if there is a discretionary</p> <p>2 decision to make, I will make it through the</p> <p>3 lens of an elected Republican.</p> <p>4 Q. And do you consider the inclusion of partisan</p> <p>5 advantage as a criteria in the 2016 Contingent</p> <p>6 Congressional Plan -- used to adopt the 2016</p> <p>7 Contingent Congressional Plan such a</p> <p>8 discretionary decision?</p> <p>9 A. Yes.</p> <p>10 Q. Do you consider any of the other criteria in the</p> <p>11 2016 adopted criteria a discretionary decision?</p> <p>12 A. Largely, yeah. I mean, you can draw -- you</p> <p>13 know, I chose to apply the definition of</p> <p>14 compactness that I believe, which is trying to</p> <p>15 keep as many counties whole as we can. If I had</p> <p>16 not had that as a goal, I think we could have</p> <p>17 still drawn a pretty map; it just -- maybe it's</p> <p>18 just stripes through the state. I don't know.</p> <p>19 I think that these -- these -- other</p> <p>20 than the equal population that these were</p> <p>21 considered and balanced and harmonized together</p> <p>22 and produced a map that to the eye of a judge I</p> <p>23 think they recognized that we tried to follow</p> <p>24 the instructions they gave us, which were very</p> <p>25 limited.</p> <p style="text-align: right;">177</p>	<p>1 that the districts were supposed to touch. I</p> <p>2 know there's been some drawn in the past that</p> <p>3 didn't touch. Those weren't found to be</p> <p>4 constitutional.</p> <p>5 So, I mean, I certainly think -- I</p> <p>6 can't cite you a case. I'm not an attorney. So</p> <p>7 I will just say it's a traditional redistricting</p> <p>8 principle.</p> <p>9 Q. For the 2016 Contingent Congressional Plan</p> <p>10 Adopted Criteria, did you consider the use of</p> <p>11 political data as opposed to any other data</p> <p>12 discretionary?</p> <p>13 A. I consider the use of political data to</p> <p>14 reemphasize that we in no way were using racial</p> <p>15 data, which is the whole point of the Harris</p> <p>16 case. So I do think it is absolutely necessary</p> <p>17 to point out that the only data other than the</p> <p>18 population that can be used would be political,</p> <p>19 which means you can't use race.</p> <p>20 So, yeah, I think that was essential to</p> <p>21 complying with the Harris order.</p> <p>22 Q. Okay. We began this discussion with partisan</p> <p>23 advantage. Did you think it was discretionary</p> <p>24 whether this plan needed to address the shape of</p> <p>25 the 12th district?</p> <p style="text-align: right;">179</p>
<p>1 Q. So if we could, I think it's valuable to address</p> <p>2 those criteria one by one on the question that</p> <p>3 we just discussed.</p> <p>4 This is -- I'm not looking at in</p> <p>5 Exhibit 24, but I think the actual criteria are</p> <p>6 Exhibit 24.</p> <p>7 A. Yes, sir, they are.</p> <p>8 Q. Equal population, observing the equal population</p> <p>9 requirement is not a discretionary decision,</p> <p>10 correct?</p> <p>11 A. In my opinion it is not.</p> <p>12 Q. Is requiring contiguous territory a</p> <p>13 discretionary decision?</p> <p>14 A. I believe it is a traditional redistricting</p> <p>15 criteria.</p> <p>16 Q. And as a traditional redistricting criteria,</p> <p>17 your understanding is that the use of a</p> <p>18 traditional redistricting criteria like</p> <p>19 contiguity will be a factor in assessing the</p> <p>20 likelihood that a court will allow a given plan;</p> <p>21 is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. But is it discretionary?</p> <p>24 A. You know, I'm not as familiar with the law as</p> <p>25 some folks are. Obviously I've always believed</p> <p style="text-align: right;">178</p>	<p>1 A. No. I thought that was a requirement of the</p> <p>2 Harris court.</p> <p>3 Q. Did you think it was discretionary whether the</p> <p>4 plan needed to meet some measure of compactness?</p> <p>5 A. I think to a judge or to the general public or</p> <p>6 to any interesting -- interested person, a map</p> <p>7 that looks pretty and seems to flow will have a</p> <p>8 better chance of being accepted.</p> <p>9 So as to compactness, again, I can't</p> <p>10 really -- I could not really find a definition</p> <p>11 of compactness that was consistently applied.</p> <p>12 So I would say that the concept, as abstract as</p> <p>13 it might be, of compactness is a traditional</p> <p>14 redistricting criteria, but I don't really think</p> <p>15 there's a uniform way to define what that is.</p> <p>16 Q. Understood. But as a -- finding some measure of</p> <p>17 compactness, you felt that was necessary for the</p> <p>18 2016 adopted criteria?</p> <p>19 MR. FARR: Objection to the form.</p> <p>20 BY MR. THORPE:</p> <p>21 Q. Did you think -- could you have asked your -- in</p> <p>22 drafting the 2016 adopted criteria, did you feel</p> <p>23 you had discretion as to whether compactness</p> <p>24 would be one of the criteria?</p> <p>25 A. I didn't think there was anything that was</p> <p style="text-align: right;">180</p>

1 absolutely requiring us to consider compactness
2 other than in previous court cases the word
3 "compactness" had been used often.
4 Q. And so similar to your response on contiguity,
5 one of the things you considered about
6 compactness was it may be a factor that weighed
7 in favor of or against a court allowing the 2016
8 plan?
9 A. Yes.
10 Q. And finally, incumbency, did you consider
11 incumbency a discretionary choice that you made
12 in drafting the 2016 adopted criteria?
13 A. I think it is a traditional redistricting
14 criteria. We were trying to comply with the
15 court order, not pick a fight with the members
16 of Congress, so that's why I did that.
17 MR. THORPE: Okay. We're good.
18 (Discussion held off the reporter's
19 written record.)
20 MR. FARR: We can go off the record.
21 THE VIDEOGRAPHER: Off the record at
22 3:44 p.m.
23 [SIGNATURE RESERVED]
24 [DEPOSITION CONCLUDED AT 3:44 P.M.]
25

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1 ACKNOWLEDGEMENT OF DEPONENT
2
3 I, DAVID LEWIS, declare under the penalties of
4 perjury under the State of North Carolina that I have read
5 the foregoing pages, which contain a correct transcription
6 of answers made by me to the questions therein recorded,
7 with the exception(s) and/or addition(s) reflected on the
8 correction sheet attached hereto, if any.
9 Signed this the day of , 2017.
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DAVID LEWIS

182

1 ERRATA SHEET
2 Case Name: Common Cause v Rucho / LWV NC v Rucho
3 Witness Name: DAVID LEWIS
4 Deposition Date: Thursday, January 26, 2017
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6 Page/Line Reads Should Read
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25 Signature Date

183

1 STATE OF NORTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF WAKE)
4
5 I, DENISE MYERS BYRD, Court Reporter and Notary
6 Public, the officer before whom the foregoing proceeding was
7 conducted, do hereby certify that the witness(es) whose
8 testimony appears in the foregoing proceeding were duly
9 sworn by me; that the testimony of said witness(es) were
10 taken by me to the best of my ability and thereafter
11 transcribed under my supervision; and that the foregoing
12 pages, inclusive, constitute a true and accurate
13 transcription of the testimony of the witness(es).
14 I do further certify that I am neither counsel for,
15 related to, nor employed by any of the parties to this
16 action, and further, that I am not a relative or employee of
17 any attorney or counsel employed by the parties thereof, nor
18 financially or otherwise interested in the outcome of said
19 action.
20 This the 14th day of February 2017.
21
22
23
24
25

Denise Myers Byrd
CSR 8340, RPR, CLR 102409-02

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Exhibit C

2016 Contingent Congressional Plan Committee Adopted Criteria

Equal Population

The Committee will use the 2010 federal decennial census data as the sole basis of population for the establishment of districts in the 2016 Contingent Congressional Plan. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.

Contiguity

Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

Political data

The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

Partisan Advantage

The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

Twelfth District

The current General Assembly inherited the configuration of the Twelfth District from past General Assemblies. This configuration was retained because the district had already been heavily litigated over the past two decades and ultimately approved by the courts. The Harris court has criticized the shape of the Twelfth

District citing its “serpentine” nature. In light of this, the Committee shall construct districts in the 2016 Contingent Congressional Plan that eliminate the current configuration of the Twelfth District.

Compactness

In light of the Harris court’s criticism of the compactness of the First and Twelfth Districts, the Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan that improve the compactness of the current districts and keep more counties and VTDs whole as compared to the current enacted plan. Division of counties shall only be made for reasons of equalizing population, consideration of incumbency and political impact. Reasonable efforts shall be made not to divide a county into more than two districts.

Incumbency

Candidates for Congress are not required by law to reside in a district they seek to represent. However, reasonable efforts shall be made to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts constructed in the 2016 Contingent Congressional Plan.

Exhibit D

NORTH CAROLINA GENERAL ASSEMBLY
JOINT COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Tuesday, February 16, 2016
Reported by Carol M. Smith

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

2	4
<p>1 SEN. RUCHO: Let's come to order for a 2 few moments. Would everybody please take their 3 seats? We're going to have about a 10- or 15- 4 minute break to get some papers printed up and 5 ready to go as a part of our agenda, but what we 6 will do first is identify the Sergeant-at-Arms that 7 are here today. We've got -- for the House side, 8 we've got Reggie Sills, Marvin Lee, David Layden 9 and Terry McCraw, and then we've got our Senate 10 Sergeant-at-Arms Jim Hamilton, Ed Kesler and Hal 11 Roach. These folks help us make this meeting 12 organized and run efficiently, and we wouldn't be 13 able to do a good job without them. 14 I appreciate everybody yesterday coming 15 out and helping us accomplish our public hearing. 16 We had a lot of good thoughts and advice, and I 17 hope that you've taken some time to read the public 18 comments that came over the Internet so that we can 19 be able to talk about the subject matter on an 20 intelligent level. 21 Representative Lewis and I want to again 22 remark about the fact that the staff has done a 23 remarkable job for us in putting together 24 yesterday's public hearing and this meeting, and 25 the IT folks were miracle workers in trying to</p>	<p>1 SEN. MCKISSICK: Here. 2 CLERK: Senator Smith? 3 SEN. SMITH: Here. 4 CLERK: Senator Smith-Ingram? 5 SEN. SMITH-INGRAM: Present. 6 CLERK: Senator Wells? 7 SEN. WELLS: Here. 8 CLERK: Senator Blue? 9 SEN. BLUE: Here. 10 CLERK: Senator Ford? 11 (No response.) 12 CLERK: Senator Ford? 13 (No response.) 14 CLERK: Senator Wade? 15 (No response.) 16 CLERK: Senator Barefoot? 17 SEN. BAREFOOT: Here. 18 CLERK: Senator Randleman? 19 SEN. RANDLEMAN: Here. 20 CLERK: Senator Jackson? 21 SEN. JACKSON: Here. 22 CLERK: Representative Lewis? 23 REP. LEWIS: Here. 24 CLERK: Representative Jones? 25 REP. JONES: Here.</p>
3	5
<p>1 coordinate six sites plus Raleigh to do a good job 2 and allow us to be able to reach out across the 3 state with this public hearing that is -- that was 4 yesterday, and it was successful, and we're 5 thrilled that they could do such a good job for us. 6 All right, the first point -- and I'm 7 going to have Mr. Verbiest, our clerk, do a roll 8 call, and would you just, as your name is 9 mentioned, please recognize it, or if we hear 10 quiet, we know you're not here. 11 CLERK: Senator Sanderson? 12 SEN. SANDERSON: Present. 13 CLERK: Senator Brown? 14 SEN. BROWN: Here. 15 CLERK: Senator Apodaca? 16 (No response.) 17 CLERK: Senator Clark? 18 SEN. CLARK: Present. 19 CLERK: Senator Harrington? 20 SEN. HARRINGTON: Here. 21 CLERK: Senator Hise? 22 SEN. HISE: Here. 23 CLERK: Senator Lee? 24 SEN. LEE: Here. 25 CLERK: Senator McKissick?</p>	<p>1 CLERK: Representative Hager? 2 REP. HAGER: Here. 3 CLERK: Representative Stevens? 4 REP. STEVENS: Here. 5 CLERK: Representative Hurley? 6 REP. HURLEY: (No response.) 7 CLERK: Representative Stam? 8 REP. STAM: Here. 9 CLERK: Representative Jordan? 10 REP. JORDAN: Here. 11 CLERK: Representative Johnson? 12 REP. JOHNSON: Here. 13 CLERK: Representative Brawley? 14 REP. BRAWLEY: Present. 15 CLERK: Representative Hardister? 16 REP. HARDISTER: Here. 17 CLERK: Representative Davis? 18 REP. DAVIS: Here. 19 CLERK: Representative McGrady? 20 REP. MCGRADY: Here. 21 CLERK: Representative Michaux? 22 REP. MICHAUX: Here. 23 CLERK: Representative Cotham? 24 REP. COTHAM: Here. 25 CLERK: Representative Hanes?</p>

<p style="text-align: right;">6</p> <p>1 REP. HANES: Here.</p> <p>2 CLERK: Representative Moore?</p> <p>3 REP. MOORE: Here.</p> <p>4 CLERK: Representative Farmer-</p> <p>5 Butterfield?</p> <p>6 REP. FARMER-BUTTERFIELD: Here.</p> <p>7 CLERK: Representative Dixon?</p> <p>8 (No response.)</p> <p>9 CLERK: Representative Hurley?</p> <p>10 REP. HURLEY: Right here.</p> <p>11 CLERK: Thank you.</p> <p>12 SEN. RUCHO: And I think my name was</p> <p>13 omitted, so I might just mention the fact that I'm</p> <p>14 here today --</p> <p>15 CLERK: Yes. Sorry.</p> <p>16 SEN. RUCHO: -- despite a long day</p> <p>17 yesterday. All right.</p> <p>18 We've got some work to do today. We've</p> <p>19 got just about 15 minutes, and may I ask you to</p> <p>20 just stay at ease for about 15 minutes, and then we</p> <p>21 will begin the meeting and have a full agenda</p> <p>22 before us.</p> <p>23 Representative Lewis, do you have any</p> <p>24 other thoughts or comments you'd like to share?</p> <p>25 REP. LEWIS: No.</p>	<p style="text-align: right;">8</p> <p>1 so under the circumstances, we are taking a</p> <p>2 precaution, and we anticipate some reaction from</p> <p>3 the Supreme Court on the motion for stay which will</p> <p>4 allow the election to continue forward, and then</p> <p>5 allow the court case to continue on its normal</p> <p>6 course, which would be, in my judgment, a better</p> <p>7 way to go, since the election has already been</p> <p>8 started, and we don't want to disenfranchise the</p> <p>9 voters in any manner.</p> <p>10 That being said, we are going to begin</p> <p>11 our agenda. Representative Lewis, would you have</p> <p>12 any comments at this time?</p> <p>13 REP. LEWIS: No, sir.</p> <p>14 SEN. RUCHO: No? Okay. Then we're going</p> <p>15 to go on to the second, which is discussion of the</p> <p>16 criteria of the 2016 Contingent Congressional Maps,</p> <p>17 and what these are, are criteria as to how these</p> <p>18 maps should be drawn to try to meet the</p> <p>19 requirements imposed by the Court and also remain</p> <p>20 within the legal limits of the law. Representative</p> <p>21 Lewis?</p> <p>22 REP. LEWIS: Mr. Chairman, ladies and</p> <p>23 gentlemen of the Joint Select Committee on</p> <p>24 Congressional Redistricting and members of the</p> <p>25 public, I too would like to offer a brief</p>
<p style="text-align: right;">7</p> <p>1 SEN. RUCHO: Okay. Then just at ease for</p> <p>2 about 10 to 15 minutes. Thank you.</p> <p>3 (DISCUSSION OFF RECORD)</p> <p>4 SEN. RUCHO: Spend a few minutes taking a</p> <p>5 look at that, and see from its beginning on through</p> <p>6 the latest maps what has transpired. I think it</p> <p>7 would be very educational. Thank you.</p> <p>8 (RECESS, 10:14 - 10:23 A.M.)</p> <p>9 SEN. RUCHO: All right, let's call this</p> <p>10 Joint Select Committee on Redistricting back into</p> <p>11 order. You have a copy of the agenda before you,</p> <p>12 and there's just one correction on the agenda. On</p> <p>13 the right quadrant, under Senate, it had Harry</p> <p>14 Warren. It should be Senator Harry Brown, so fix</p> <p>15 that. Okay.</p> <p>16 Well, yesterday we had a chance to have a</p> <p>17 public hearing, and I think each of you knows that</p> <p>18 the General Assembly, based on the Harris case,</p> <p>19 there was an opinion given by the three-judge</p> <p>20 panel, and we are responding to that. We still</p> <p>21 believe that the maps that are presently enacted</p> <p>22 are fair, legal, and constitutional, as has been</p> <p>23 validated by five different bodies, including the</p> <p>24 Justice Department, including a three-judge panel,</p> <p>25 including the Supreme Court on three occasions, and</p>	<p style="text-align: right;">9</p> <p>1 historical perspective on what brings us here</p> <p>2 today.</p> <p>3 In 2011, after the release of the Census,</p> <p>4 this General Assembly set out to create fair and</p> <p>5 legal Congressional districts. In doing so, the</p> <p>6 2011 process included an unprecedented number of</p> <p>7 public hearings, 36 scheduled before the release of</p> <p>8 the maps, 7 after the release of our original</p> <p>9 proposed districts, 10 dedicated to receiving</p> <p>10 public comment on the release of the entire plan,</p> <p>11 and an additional 10 after the release of our</p> <p>12 respective proposals for the legislative districts.</p> <p>13 Additionally, we provided easy public</p> <p>14 access for public comment via the North Carolina</p> <p>15 General Assembly Web site, and invited additional</p> <p>16 written comments through both e-mail and the US</p> <p>17 Postal Service. Senator Rucho and I thank the</p> <p>18 thousands of citizens who exercised their right to</p> <p>19 offer comments at that set of public hearings or</p> <p>20 submit written comments. All of those comments</p> <p>21 were reviewed by the chairs and preserved as a</p> <p>22 permanent record of citizen input on this important</p> <p>23 task.</p> <p>24 We also took back then the unprecedented</p> <p>25 step of providing the leadership of the minority</p>

<p style="text-align: right;">10</p> <p>1 parties in the House and the Senate and the</p> <p>2 Legislative Black Caucus specialized computer</p> <p>3 hardware and software in their respective offices,</p> <p>4 along with staff support which was available to all</p> <p>5 members. The 2011 General Assembly did ultimately</p> <p>6 adopt redistricting plans, as I recall, largely</p> <p>7 along party lines, as unfortunately, so many items</p> <p>8 here are decided.</p> <p>9 For purposes of my discussion today, I</p> <p>10 will refer to the 2011 plans as the enacted plans.</p> <p>11 The enacted congressional redistricting plan of</p> <p>12 2011 was first precleared by the United States</p> <p>13 Department of Justice, as was required by Section 5</p> <p>14 of the Voting Rights Act. The enacted</p> <p>15 Congressional redistricting plan was then</p> <p>16 challenged in state courts through what is known as</p> <p>17 the Dixon versus Rucho case. The plan was affirmed</p> <p>18 by a three-judge panel and by the North Carolina</p> <p>19 Supreme Court.</p> <p>20 The enacted Congressional redistricting</p> <p>21 plan has been used to elect members of the US House</p> <p>22 of Representatives in 2012 and 2014, and has also</p> <p>23 seen citizens file for election in each of the 13</p> <p>24 districts this year. Further, voting has begun,</p> <p>25 and we are informed by the State Board of Elections</p>	<p style="text-align: right;">12</p> <p>1 70 speakers participating. There were also more</p> <p>2 than 80 comments submitted online.</p> <p>3 The chairs thank all the citizens who</p> <p>4 participated yesterday. The chair reminds the</p> <p>5 members that the written comments have been placed</p> <p>6 on the General Assembly's Web site, and a link e-</p> <p>7 mailed to each of your e-mail accounts.</p> <p>8 Mr. Chairman, at your direction, I would</p> <p>9 like to submit to the committee a series of</p> <p>10 proposals to establish criteria for the drawing of</p> <p>11 the 2016 contingent Congressional map.</p> <p>12 SEN. RUCHO: Yes, sir, Chairman Lewis.</p> <p>13 You can begin and go through the rotation as -- as</p> <p>14 you planned.</p> <p>15 REP. LEWIS: Mr. Chairman, I'd like staff</p> <p>16 to distribute the 2016 Congressional -- pardon</p> <p>17 me -- the 2016 contingent Congressional plan</p> <p>18 proposed criteria, beginning with "Equal</p> <p>19 Population," to the members.</p> <p>20 SEN. RUCHO: Sergeant-at-Arms will be</p> <p>21 passing this out, and we're going to take our time,</p> <p>22 read it thoroughly, and then -- so Representative</p> <p>23 Lewis will explain it, and then we'll debate each</p> <p>24 of them as we move forward. (Pause.)</p> <p>25 Has everyone received a copy of the first</p>
<p style="text-align: right;">11</p> <p>1 that more than 16,000 citizens have already</p> <p>2 requested to vote by mail.</p> <p>3 Unfortunately, the enacted plan was</p> <p>4 challenged again in what is known as the Harris</p> <p>5 versus McCrory case. In that decision, in which we</p> <p>6 respectfully disagree with the three-judge panel,</p> <p>7 it was found that the 1st Congressional District</p> <p>8 and the 12th Congressional District are racial</p> <p>9 gerrymanders, and they ordered new maps be drawn by</p> <p>10 February 19th, and that the election for US House</p> <p>11 not be held under the current maps.</p> <p>12 While, as Chairman Rucho said, we are</p> <p>13 confident that a stay of this decision, which</p> <p>14 interrupts an election already in progress, will be</p> <p>15 granted, and that the enacted map will ultimately</p> <p>16 be upheld on appeal, we are required to begin the</p> <p>17 process of drawing a 2016 contingent Congressional</p> <p>18 map. I reiterate that while the 2011 plan was</p> <p>19 dictated by the Cromartie and Strickland decisions</p> <p>20 of the US Supreme Court, we will move forward to</p> <p>21 establish a plan based on the Harris opinion.</p> <p>22 The process -- this process began with</p> <p>23 the appointment of this joint select committee, and</p> <p>24 continued yesterday with the public hearings held</p> <p>25 in six locations across the state, with more than</p>	<p style="text-align: right;">13</p> <p>1 one? They're not in any order as far as priorities</p> <p>2 or anything. They're just going to be set forward.</p> <p>3 VARIOUS COMMITTEE MEMBERS: No, no.</p> <p>4 SEN. RUCHO: Okay. Hang on. This first</p> <p>5 one is called "Equal Population." (Pause.)</p> <p>6 All right, does everyone have a copy</p> <p>7 that -- now, let's be clear. Ladies and gentlemen</p> <p>8 in the audience, the members of the committee will</p> <p>9 be participating within this meeting. I know we</p> <p>10 have a number of members that have come here with</p> <p>11 interest, and we're delighted to have them, and</p> <p>12 recognize that every member that is here can submit</p> <p>13 a reimbursement form, but the people that are on</p> <p>14 the committee will be the ones participating in</p> <p>15 today's business activity of this committee</p> <p>16 meeting.</p> <p>17 All right, Representative Lewis, first</p> <p>18 one.</p> <p>19 REP. LEWIS: Mr. Chairman, as I explain</p> <p>20 this one, I would request that the Sergeant-at-Arms</p> <p>21 go ahead and distribute the second one, which is</p> <p>22 entitled "Contiguity."</p> <p>23 Mr. Chairman, the first criteria that I</p> <p>24 would urge the committee to adopt is that each</p> <p>25 district should be of equal population. This is</p>

<p style="text-align: right;">14</p> <p>1 pretty self-explanatory. This is in line with one 2 person, one vote. It simply says, as members can 3 read, that the number of persons in each 4 Congressional district shall be as near equal as 5 practicable, as determined under the most recent 6 Census, which of course would be the 2010 Census. 7 Mr. Chairman, I move adoption of this criteria. 8 REP. STEVENS: Are you waiting for a 9 second? 10 SEN. RUCHO: I've got a motion from 11 Representative Lewis to move forward with this 12 adoption of this first equal -- equal population. 13 Representative Stevens, thank you. We've got a 14 second. Discussion, ladies and gentlemen? 15 (No response.) 16 SEN. RUCHO: All right, I see none. All 17 in favor of the adoption of the equal population -- 18 yes. I'll go back. We're going to go ahead and 19 we're going to do roll-call vote on this. And so 20 I'm saying we're going to have a roll call from the 21 clerk on the equal population. Please identify -- 22 or just say "Aye" or "Nay," please. Mr. Verbiest? 23 CLERK: Senator Rucho? 24 SEN. RUCHO: Aye. 25 CLERK: Chairman Lewis?</p>	<p style="text-align: right;">16</p> <p>1 CLERK: Representative Jordan? 2 REP. JORDAN: Aye. 3 CLERK: Representative McGrady? 4 REP. MCGRADY: Aye. 5 CLERK: Representative Michaux? 6 REP. MICHAUX: No. 7 CLERK: Representative Moore? 8 REP. MOORE: Aye. 9 CLERK: Representative Stam? 10 REP. STAM: Aye. 11 CLERK: Representative Stevens? 12 REP. STEVENS: Aye. 13 CLERK: Representative Dixon? 14 (No response.) 15 SEN. RUCHO: You do have Senator Apodaca 16 is here now? 17 CLERK: Yes, I do. 18 SEN. RUCHO: Okay. 19 CLERK: Senator Apodaca? 20 SEN. APODACAC: Aye. 21 CLERK: Senator Barefoot? 22 SEN. BAREFOOT: Aye. 23 CLERK: Senator Blue? 24 SEN. BLUE: Aye. 25 CLERK: Senator Brown?</p>
<p style="text-align: right;">15</p> <p>1 REP. LEWIS: Aye. 2 CLERK: Representative Jones? 3 REP. JONES: Aye. 4 CLERK: Representative Brawley? 5 REP. BRAWLEY: Aye. 6 CLERK: Representative Cotham? 7 REP. COTHAM: Aye. 8 CLERK: Representative Davis? 9 REP. DAVIS: Aye. 10 CLERK: Representative Farmer- 11 Butterfield? 12 REP. FARMER-BUTTERFIELD: Aye. 13 CLERK: Representative Hager? 14 REP. HAGER: Aye. 15 SEN. RUCHO: Please speak up, please. 16 CLERK: Representative Hanes? 17 REP. HANES: Aye. 18 CLERK: Representative Hardister? 19 REP. HARDISTER: Aye. 20 CLERK: Representative Hurley? 21 REP. HURLEY: Aye. 22 CLERK: Representative Jackson? 23 REP. JACKSON: Aye. 24 CLERK: Representative Johnson? 25 REP. JOHNSON: Aye.</p>	<p style="text-align: right;">17</p> <p>1 SEN. BROWN: Aye. 2 CLERK: Senator Clark? 3 SEN. CLARK: Aye. 4 CLERK: Senator Ford? 5 (No response.) 6 CLERK: Senator Harrington? 7 SEN. HARRINGTON: Aye. 8 CLERK: Senator Hise? 9 SEN. HISE: Aye. 10 CLERK: Senator Jackson? 11 SEN. JACKSON: Aye. 12 CLERK: Senator Lee? 13 SEN. LEE: Aye. 14 CLERK: Senator McKissick? 15 SEN. MCKISSICK: Aye. 16 CLERK: Senator Randleman? 17 SEN. RANDLEMAN: Aye. 18 CLERK: Senator Sanderson? 19 SEN. SANDERSON: Aye. 20 CLERK: Senator Smith? 21 SEN. SMITH: Aye. 22 CLERK: Senator Smith-Ingram? 23 SEN. SMITH-INGRAM: Aye. 24 CLERK: Senator Wade? 25 (No response.)</p>

<p style="text-align: right;">18</p> <p>1 CLERK: Senator Wells?</p> <p>2 SEN. WELLS: Aye.</p> <p>3 CLERK: Only one nay.</p> <p>4 SEN. RUCHO: Okay. Ladies and gentlemen,</p> <p>5 we had the roll vote, and there was just one</p> <p>6 negative, so the first criteria establishing equal</p> <p>7 population has passed. All right. Representative</p> <p>8 Lewis?</p> <p>9 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>10 Mr. Chairman, the next criteria I propose the</p> <p>11 committee adopt -- adopt is "Contiguity." This</p> <p>12 simply says that --</p> <p>13 REP. STEVENS: Mr. Chairman, we don't</p> <p>14 have copies of it yet.</p> <p>15 SEN. RUCHO: I'm sorry? Please repeat</p> <p>16 that again. You don't have the second?</p> <p>17 REP. STEVENS: I do not have a copy, and</p> <p>18 perhaps I'm sitting a little out of the way.</p> <p>19 SEN. RUCHO: Okay. Sergeant-at-Arms,</p> <p>20 would someone please get the contiguity criteria?</p> <p>21 REP. LEWIS: Mr. Chairman, if it pleases</p> <p>22 the Chair, I would respectfully request that -- the</p> <p>23 next criteria I intend to offer is "Political</p> <p>24 Data." If that could be distributed to the</p> <p>25 committee, perhaps to save a little time?</p>	<p style="text-align: right;">20</p> <p>1 REP. LEWIS: Senator Blue, thank you for</p> <p>2 that question. Let me be clear that it does not,</p> <p>3 and I would be opposed to any form of single-point</p> <p>4 contiguity has been ruled as not a legal form of</p> <p>5 mapmaking in the past.</p> <p>6 SEN. RUCHO: Follow-up?</p> <p>7 SEN. BLUE: Does it contemplate any</p> <p>8 minimal distance on the water that is used to</p> <p>9 determine that geographically, areas are</p> <p>10 contiguous?</p> <p>11 REP. LEWIS: Senator Blue, I don't</p> <p>12 believe it contemplates the Atlantic Ocean, but, I</p> <p>13 mean, as you know, sir, we have beautiful sounds in</p> <p>14 our state that that is a community, and so the</p> <p>15 water -- I can't give you an exact -- an exact</p> <p>16 definition of how much water is too much water.</p> <p>17 SEN. BLUE: Last point.</p> <p>18 SEN. RUCHO: Follow-up?</p> <p>19 SEN. BLUE: Does it contemplate the point</p> <p>20 in the Cape Fear River in one of your counties</p> <p>21 that's currently used as a basis for connecting</p> <p>22 geographically parts of the 4th Congressional</p> <p>23 District?</p> <p>24 REP. LEWIS: Senator Blue, I appreciate</p> <p>25 that inquiry. I would -- I would point out that</p>
<p style="text-align: right;">19</p> <p>1 SEN. RUCHO: Okay, that's fine.</p> <p>2 Sergeant-at-Arms, would you please distribute the</p> <p>3 third criteria, which is "Political Data"?</p> <p>4 Representative Lewis, would you want staff to read</p> <p>5 this, the specifics as they're presented, or do you</p> <p>6 prefer to do it yourself?</p> <p>7 REP. LEWIS: Mr. Chairman, are you trying</p> <p>8 to imply I can't say "contiguity"?</p> <p>9 (Laughter.)</p> <p>10 SEN. RUCHO: That is a mouthful. I agree</p> <p>11 with you. All right. We have before us -- would</p> <p>12 you please read this first -- or the second,</p> <p>13 "Contiguity"?</p> <p>14 MS. CHURCHILL: "Contiguity:</p> <p>15 Congressional districts shall be comprised of</p> <p>16 contiguous territory. Contiguity by water is</p> <p>17 sufficient."</p> <p>18 SEN. RUCHO: Representative Lewis?</p> <p>19 REP. LEWIS: Members, this is a standard</p> <p>20 redistricting practice, and I would move the</p> <p>21 adoption of the criteria by the committee.</p> <p>22 SEN. RUCHO: All right. Senator Blue?</p> <p>23 SEN. BLUE: Question of Representative</p> <p>24 Lewis: Does this contemplate single-point</p> <p>25 contiguity in water?</p>	<p style="text-align: right;">21</p> <p>1 there is an island there, so there is actually land</p> <p>2 in the middle of the Cape Fear, that exact point</p> <p>3 that you're referring to, but I would have to say</p> <p>4 that I do not believe that that is the intent of</p> <p>5 this.</p> <p>6 SEN. RUCHO: Senator Smith, did you have</p> <p>7 a question?</p> <p>8 SEN. SMITH: No.</p> <p>9 SEN. RUCHO: Oh, okay. Any additional</p> <p>10 questions or comments on the contiguity criteria?</p> <p>11 (No response.)</p> <p>12 SEN. RUCHO: Seeing none, all right, Mr.</p> <p>13 Verbiest, would you do roll call again?</p> <p>14 CLERK: Representative Lewis?</p> <p>15 REP. LEWIS: Aye.</p> <p>16 CLERK: Representative Jones?</p> <p>17 REP. JONES: Aye.</p> <p>18 CLERK: Representative Brawley?</p> <p>19 REP. BRAWLEY: Aye.</p> <p>20 CLERK: Representative Cotham?</p> <p>21 REP. COTHAM: Aye.</p> <p>22 CLERK: Representative Davis?</p> <p>23 REP. DAVIS: Aye.</p> <p>24 CLERK: Representative Farmer-</p> <p>25 Butterfield?</p>

<p style="text-align: right;">22</p> <p>1 REP. FARMER-BUTTERFIELD: Aye. 2 CLERK: Representative Hager? 3 REP. HAGER: Aye. 4 CLERK: Representative Hanes? 5 REP. HANES: Aye. 6 CLERK: Representative Hardister? 7 REP. HARDISTER: Aye. 8 CLERK: Representative Hurley? 9 REP. HURLEY: Aye. 10 CLERK: Representative Jackson? 11 REP. JACKSON: Aye. 12 CLERK: Representative Johnson? 13 REP. JOHNSON: Aye. 14 CLERK: Representative Jordan? 15 REP. JORDAN: Aye. 16 CLERK: Representative McGrady? 17 REP. MCGRADY: Aye. 18 CLERK: Representative Michaux? 19 REP. MICHAUX: Aye. 20 CLERK: Representative Moore? 21 REP. MOORE: Aye. 22 CLERK: Representative Stam? 23 REP. STAM: Aye. 24 CLERK: Representative Stevens? 25 REP. STEVENS: Aye.</p>	<p style="text-align: right;">24</p> <p>1 CLERK: Senator Sanderson? 2 SEN. SANDERSON: Aye. 3 CLERK: Senator Smith? 4 SEN. SMITH: Aye. 5 CLERK: Senator Smith-Ingram? 6 SEN. SMITH-INGRAM: Aye. 7 CLERK: Senator Waddell? 8 (No response.) 9 CLERK: Senator Wade? 10 (No response.) 11 CLERK: Senator Wells? 12 SEN. WELLS: Aye. 13 SEN. RUCHO: Any against? 14 CLERK: Unanimous. 15 SEN. RUCHO: All right, members of the 16 committee, the criterion on contiguity passed 17 unanimously and was adopted unanimously. All 18 right. 19 REP. LEWIS: Mr. Chairman, I'd like to -- 20 SEN. RUCHO: Mr. Lewis, you've got 21 "Political Data" before you, and you would like the 22 next criteria sent out to the members? 23 REP. LEWIS: Mr. Chairman, if we could, 24 let's do "Political Data," and then we'll move on 25 to the next one. Let's not distribute --</p>
<p style="text-align: right;">23</p> <p>1 CLERK: Senator Rucho? 2 SEN. RUCHO: Aye. 3 CLERK: Senator Apodaca? 4 SEN. APODACA: Aye. 5 CLERK: Senator Barefoot? 6 SEN. BAREFOOT: Aye. 7 CLERK: Senator Blue? 8 SEN. BLUE: Aye. 9 CLERK: Senator Brown? 10 SEN. BROWN: Aye. 11 CLERK: Senator Clark? 12 SEN. CLARK: Aye. 13 CLERK: Senator Harrington? 14 SEN. HARRINGTON: Aye. 15 CLERK: Senator Hise? 16 SEN. HISE: Aye. 17 CLERK: Senator Jackson? 18 SEN. JACKSON: Aye. 19 CLERK: Senator Lee? 20 SEN. LEE: Aye. 21 CLERK: Senator McKissick? 22 SEN. MCKISSICK: Aye. 23 CLERK: Senator Sandleman? Senator 24 Randleman? I'm sorry. 25 SEN. RANDLEMAN: Aye.</p>	<p style="text-align: right;">25</p> <p>1 SEN. RUCHO: All right. So you want to 2 just take care of that. Would -- Ms. Churchill, 3 would you read the one on political data, please? 4 MS. CHURCHILL: "Political Data: The 5 only data other than population data to be used to 6 construct Congressional districts shall be election 7 results in statewide contests since 2008, not 8 including the last two Presidential contests. Data 9 identifying the race of individuals or voters shall 10 not be used in the construction or consideration of 11 districts in the 2016 contingent Congressional 12 plan. Voting districts, referred to as VTDS, 13 should be split only when necessary to comply with 14 the zero deviation population requirements set 15 forth above in order to ensure the integrity of 16 political data." 17 SEN. RUCHO: All right. Representative 18 Lewis, that is before the committee. 19 REP. LEWIS: Mr. Chairman, I -- 20 SEN. RUCHO: Let him explain it, please. 21 REP. LEWIS: I believe it explains 22 itself. I'll be happy to yield to -- 23 SEN. RUCHO: All right. Question, 24 Senator Blue? 25 SEN. BLUE: Yeah. This might be one for</p>

<p style="text-align: right;">26</p> <p>1 the staff, Mr. Chairman.</p> <p>2 SEN. RUCHO: All right. Staff?</p> <p>3 SEN. BLUE: The second -- the second full</p> <p>4 paragraph, can you restrict -- and I think I know</p> <p>5 where you're trying to go to, but can you restrict</p> <p>6 the use of race in drawing the two districts in</p> <p>7 question and be in conformity with the Voting</p> <p>8 Rights Act as the Court enunciated in its decision</p> <p>9 several weeks ago?</p> <p>10 SEN. RUCHO: Representative Lewis, do you</p> <p>11 want to respond to that?</p> <p>12 REP. LEWIS: Mr. Chairman, thank you.</p> <p>13 Senator Blue, I appreciate that inquiry. It is my</p> <p>14 understanding and reading of the opinion that race</p> <p>15 is not to be a factor in drawing the districts.</p> <p>16 Adoption of this criteria would mean that the ISD</p> <p>17 staff of the General Assembly would be instructed</p> <p>18 to establish computers, and I believe the software</p> <p>19 is called Mapitude, and the staff would be</p> <p>20 instructed not to include race as a field that</p> <p>21 could be used to draw districts.</p> <p>22 I'll go one step further and say</p> <p>23 respectfully that race was not considered when the</p> <p>24 General Assembly passed the 12th District of the</p> <p>25 enacted plan, but the Court still questioned its</p>	<p style="text-align: right;">28</p> <p>1 what you're trying to do here, but I think it's an</p> <p>2 insult to their intelligence to take this approach,</p> <p>3 and I think that they will show you the ultimate</p> <p>4 power of the federal judiciary that's existed since</p> <p>5 1802 in Marbury versus Madison if you do this.</p> <p>6 REP. LEWIS: Respectfully, sir, it would</p> <p>7 never be my intent to offend or to question the</p> <p>8 dignity of the office of a federal judge. If</p> <p>9 anything I said hitherunto has done that, I</p> <p>10 apologize; however, it is my understanding that</p> <p>11 when we drew the enacted plan, we applied the</p> <p>12 Cromartie and Strickland decisions as best we knew</p> <p>13 how to do in drawing the 1st. We did not use race</p> <p>14 when we drew the 12th.</p> <p>15 The Court has found those both to be</p> <p>16 racial gerrymanders. It would be my -- they also</p> <p>17 found, based on my reading of the opinion -- I'm</p> <p>18 certainly not spitting in their face; I'm trying to</p> <p>19 read what they said -- that there's not racially</p> <p>20 polarized voting. If that is indeed the case, then</p> <p>21 race should not be a factor.</p> <p>22 SEN. RUCHO: Smith-Ingram?</p> <p>23 Representative Smith-Ingram? I'm sorry. Before I</p> <p>24 do that, I -- Senator McKissick got me first.</p> <p>25 Please, Senator McKissick.</p>
<p style="text-align: right;">27</p> <p>1 use. This would contemplate that that data would</p> <p>2 not be available to mapmakers who make maps to</p> <p>3 comply with the Harris order.</p> <p>4 SEN. RUCHO: Follow-up?</p> <p>5 SEN. BLUE: You're saying that</p> <p>6 notwithstanding all of the jurisprudence in this</p> <p>7 area, at least that I've seen over the last 25, 30</p> <p>8 years, that you're going to draw minority districts</p> <p>9 without taking into account whether minorities are</p> <p>10 in the minority district?</p> <p>11 REP. LEWIS: Senator Blue, I believe the</p> <p>12 Harris opinion found that there was not racially</p> <p>13 polarized voting in the state, and therefore, the</p> <p>14 race of the voters should not be considered. My</p> <p>15 proposal would be that we use political data only,</p> <p>16 and do not use race to draw Congressional</p> <p>17 districts.</p> <p>18 SEN. BLUE: One last --</p> <p>19 SEN. RUCHO: Follow-up?</p> <p>20 SEN. BLUE: I long for the day, just like</p> <p>21 you do, Representative Lewis, when we can do that,</p> <p>22 and I hope it's sooner rather than later, but I</p> <p>23 don't think it's wise to spit in the eyes of three</p> <p>24 federal judges who control the fate of where we're</p> <p>25 going to go with redistricting, and I understand</p>	<p style="text-align: right;">29</p> <p>1 SEN. MCKISSICK: Sure. The thing that</p> <p>2 I'm deeply concerned about is that the Voting</p> <p>3 Rights Act and the courts have historically</p> <p>4 indicated that it's appropriate to use race in</p> <p>5 drawing Congressional districts, and I don't</p> <p>6 understand why we would abandon it as a criteria.</p> <p>7 From what I understand from reading the</p> <p>8 most recent decision, Harris versus McCrory, what</p> <p>9 they were concerned about was the fact that it was</p> <p>10 a predominant consideration, so there was an</p> <p>11 overconcentration of African-American voters</p> <p>12 because majority-minority districts were created,</p> <p>13 and I think that was what I understood to be the</p> <p>14 finding, the creation of these majority-minority</p> <p>15 districts, when historically the 1st and 12th</p> <p>16 districts could elect a candidate choice without</p> <p>17 being a majority-minority district. I think it</p> <p>18 would be a misreading of the case to say that race</p> <p>19 could not be used as a consideration.</p> <p>20 REP. LEWIS: Senator McKissick, as</p> <p>21 always, I appreciate your counsel. I would</p> <p>22 reiterate that in drawing of the 12th, race was not</p> <p>23 con- -- race was not a considered factor. In the</p> <p>24 drawing of the 1st, we attempted to comply with the</p> <p>25 Cromartie and Strickland cases, which we believed</p>

<p style="text-align: right;">30</p> <p>1 called for, and still believe called for the -- if</p> <p>2 a district is drawn under the Voting Rights Act to</p> <p>3 be a majority-minority district, that it contain a</p> <p>4 majority of minorities. The Court has found that</p> <p>5 racially polarized voting does not exist to the</p> <p>6 extent to do that.</p> <p>7 During the trial, which I know Senator</p> <p>8 Blue attended -- I don't remember who-all else was</p> <p>9 there -- there was various testimony offered from</p> <p>10 the stand of how much minority population is</p> <p>11 enough. The judges were well aware that that</p> <p>12 conversation had gone on from the stand. They</p> <p>13 offered no guidance into how much minority</p> <p>14 population should be used; therefore, I simply say</p> <p>15 we draw the maps without using minority -- without</p> <p>16 using any race considerations. That way, they</p> <p>17 cannot -- the federal court will be clear that in</p> <p>18 the construction of districts that we did not use</p> <p>19 racial consideration if it's not even a factor that</p> <p>20 can be selected on the computer.</p> <p>21 SEN. MCKISSICK: Follow-up, Mr. Chair?</p> <p>22 SEN. RUCHO: Follow-up.</p> <p>23 SEN. MCKISSICK: So how would you propose</p> <p>24 that you comply with the requirements, say, of the</p> <p>25 Voting Rights Act, which basically indicates that</p>	<p style="text-align: right;">32</p> <p>1 the trigger point to draw a VRA -- VRA district.</p> <p>2 Therefore, if that is not the case, then we believe</p> <p>3 the enacted maps should stand as they are. If</p> <p>4 we're going to redraw the maps with the Harris</p> <p>5 order, which says there's not racially polarized</p> <p>6 voting, then we believe that race should not be a</p> <p>7 consideration in drawing the maps.</p> <p>8 SEN. MCKISSICK: Follow-up, Mr. Chairman.</p> <p>9 SEN. RUCHO: Follow-up.</p> <p>10 SEN. MCKISSICK: Why would we not here</p> <p>11 want to consider the election results of the 2008</p> <p>12 and 2000 -- I guess '12 presidential elections? Is</p> <p>13 there a specific reason why we want to exclude</p> <p>14 those specific election results and include other</p> <p>15 potential election results within that same general</p> <p>16 time frame?</p> <p>17 REP. LEWIS: Yes, sir.</p> <p>18 SEN. MCKISSICK: Because, I mean, the</p> <p>19 thing that's obvious to anybody is we had an</p> <p>20 African-American running for President in those two</p> <p>21 election cycles.</p> <p>22 REP. LEWIS: Yes, sir, and I don't recall</p> <p>23 which pages it's on, but in the Harris opinion, one</p> <p>24 of the judges wrote that using the 2008</p> <p>25 Obama/McCain data was really a code for trying to</p>
<p style="text-align: right;">31</p> <p>1 you should create districts that allow minorities</p> <p>2 to elect a candidate of choice if race is not an</p> <p>3 appropriate consideration? I don't know how you</p> <p>4 accomplish that objective without having it,</p> <p>5 certainly not as the predominant consideration. I</p> <p>6 would agree that cannot be done, and should not be</p> <p>7 done, but I'm trying to understand how you do that</p> <p>8 otherwise if you completely eliminate race as a</p> <p>9 criteria that you look at in drafting the maps, and</p> <p>10 then secondly -- and this shifts gears a little</p> <p>11 bit -- why would we not want to consider the --</p> <p>12 SEN. RUCHO: Which question? Is this</p> <p>13 your --</p> <p>14 SEN. MCKISSICK: Okay, yeah.</p> <p>15 SEN. RUCHO: -- first question?</p> <p>16 SEN. MCKISSICK: Yeah, first question.</p> <p>17 SEN. RUCHO: Okay.</p> <p>18 SEN. MCKISSICK: Go ahead, Representative</p> <p>19 Lewis. Thank you, sir.</p> <p>20 REP. LEWIS: Senator, I believe that my</p> <p>21 earlier answer that -- and I have a great deal of</p> <p>22 respect for you. I understand that you are an</p> <p>23 attorney, and I am not an attorney. It's my</p> <p>24 reading of the case that the Court has found that</p> <p>25 there was not racially polarized voting, which is</p>	<p style="text-align: right;">33</p> <p>1 use black versus white, so we simply say we</p> <p>2 exclude -- we take that off the table. We can use</p> <p>3 all the other ones.</p> <p>4 SEN. MCKISSICK: And I would suggest that</p> <p>5 we should --</p> <p>6 SEN. RUCHO: Follow-up?</p> <p>7 SEN. MCKISSICK: Yes. Thank you, Mr.</p> <p>8 Chair. I would suggest that there's nothing</p> <p>9 improper in considering those particular races</p> <p>10 within a greater context of all races that we might</p> <p>11 have used as benchmarks for consideration for the</p> <p>12 performance of districts or how they might vote,</p> <p>13 but I think to eliminate those specifically would</p> <p>14 be an inappropriate criteria.</p> <p>15 I would have to go back to the decisions.</p> <p>16 I think things can be used as code in combination</p> <p>17 with other actions that are taken, like drawing</p> <p>18 minority -- majority-minority districts, but yet</p> <p>19 saying race is not a factor, and it was done for</p> <p>20 political reasons. I think within the greater</p> <p>21 context, perhaps the Court might have viewed it</p> <p>22 that way, but if you identify this discretely as</p> <p>23 being one parameter among many, I don't think that</p> <p>24 that would be inappropriate to consider.</p> <p>25 I find it fine -- you know, I don't think</p>

<p style="text-align: right;">34</p> <p>1 we need to go in there and split these precincts.</p> <p>2 I think splitting the precincts would probably be a</p> <p>3 code word for understanding that you could</p> <p>4 segregate voters out based upon race as well, so I</p> <p>5 mean, I have no problems not -- not going in there</p> <p>6 and splitting out these precincts, and I think</p> <p>7 keeping the voter tabulation districts as whole as</p> <p>8 possible is a good component, but I would be</p> <p>9 opposed to the elimination of consideration of the</p> <p>10 2008 and 2012 presidential data as well as other --</p> <p>11 any other racial data that would be provided in the</p> <p>12 normal data packages that for many, many years have</p> <p>13 always been used by this General Assembly in</p> <p>14 drawing these Congressional districts. Thank you,</p> <p>15 sir.</p> <p>16 REP. LEWIS: Mr. Chairman, respectfully,</p> <p>17 I --</p> <p>18 SEN. RUCHO: Yes, sir?</p> <p>19 REP. LEWIS: -- believe that was a</p> <p>20 statement, to which I'll just respond I</p> <p>21 respectfully disagree with the gentleman from</p> <p>22 Durham.</p> <p>23 SEN. RUCHO: All right. Thank you.</p> <p>24 Senator Smith-Ingram?</p> <p>25 SEN. SMITH-INGRAM: Thank you, Mr. Chair.</p>	<p style="text-align: right;">36</p> <p>1 SEN. SMITH-INGRAM: So I can assume from</p> <p>2 what you are saying that the only reason we had</p> <p>3 split counties and split precincts in the previous</p> <p>4 plan is because we were trying to meet the mandate</p> <p>5 of the zero deviation?</p> <p>6 REP. LEWIS: No, ma'am, that's not at all</p> <p>7 what I said. What this says is that -- what this</p> <p>8 says is in drawing the map, this contingent plan</p> <p>9 that we are -- that we are talking about is that</p> <p>10 the VTDs should be split only when necessary to</p> <p>11 comply with the zero deviation requirements. I was</p> <p>12 not at all speaking about the enacted map, in which</p> <p>13 I'm certain that some precincts and voting</p> <p>14 districts were split for political purposes.</p> <p>15 SEN. SMITH-INGRAM: Last follow-up, Mr.</p> <p>16 Chair.</p> <p>17 SEN. RUCHO: Last follow-up.</p> <p>18 SEN. SMITH-INGRAM: Just a statement. I</p> <p>19 understand that our voters across the state are</p> <p>20 very sophisticated; however, there was a lot of</p> <p>21 confusion created with the split counties and the</p> <p>22 split precincts, and so I just -- as we're moving</p> <p>23 forward, we need to be careful that they are not</p> <p>24 disenfranchised by that confusion. Thank you,</p> <p>25 Representative Lewis.</p>
<p style="text-align: right;">35</p> <p>1 In regards to the proposed criteria as it relates</p> <p>2 to the voting districts and the split, one of the</p> <p>3 concerns that resonated across the state, as shown</p> <p>4 in the hearings, and as we talked to constituents,</p> <p>5 particularly in the finger counties in</p> <p>6 Congressional District 1, there is some concern</p> <p>7 about precincts being split, and a lot of voter</p> <p>8 confusion because of split counties and split</p> <p>9 precincts. Do you think the language in the last</p> <p>10 sentence goes far enough to help us alleviate that</p> <p>11 problem, and not have that issue as we move toward</p> <p>12 drawing new maps?</p> <p>13 REP. LEWIS: Senator, I thank you for</p> <p>14 that question. I would say that, as I've</p> <p>15 maintained all along, I believe that voters are</p> <p>16 sophisticated enough that split political districts</p> <p>17 do not cause confusion, but to the extent that we</p> <p>18 can not split them, we shouldn't, so I do think</p> <p>19 this sentence goes far enough in saying the only</p> <p>20 reason you would want to split a VTD, or a voting</p> <p>21 district, is to help with the zero population</p> <p>22 requirement that this committee has already</p> <p>23 adopted.</p> <p>24 SEN. SMITH-INGRAM: Follow-up.</p> <p>25 SEN. RUCHO: Follow-up.</p>	<p style="text-align: right;">37</p> <p>1 SEN. RUCHO: Thank you. I've got</p> <p>2 Representative Stam.</p> <p>3 REP. STAM: Yes. I like this criteria.</p> <p>4 It's very principled, and it's principles that I've</p> <p>5 heard, for example, the Senate Minority Leader</p> <p>6 state publicly many times. Let's not -- let's not</p> <p>7 consider race anymore. We're past that.</p> <p>8 SEN. RUCHO: Okay. Representative</p> <p>9 Michaux?</p> <p>10 REP. MICHAUX: Mr. Chairman, I'm having a</p> <p>11 problem not identifying race, and if I recall, Mr.</p> <p>12 Lewis -- and I'm reading from the opinion. It says</p> <p>13 here that "This does not mean that race can never</p> <p>14 play a role in redistricting. Legislatures are</p> <p>15 almost always cognizant of race when drawing</p> <p>16 district lines, and simply being aware of race</p> <p>17 poses no Constitutional violation."</p> <p>18 What they're saying to you is that you</p> <p>19 still can use race in the matter, but you cannot</p> <p>20 make it the predominant factor. That's the way I</p> <p>21 read it, and I think that this --</p> <p>22 SEN. RUCHO: Representative Lewis?</p> <p>23 REP. LEWIS: Representative Michaux,</p> <p>24 thank you for that. My response to that would be</p> <p>25 that not being aware of race means that you</p>

<p style="text-align: right;">38</p> <p>1 couldn't have been motivated by race.</p> <p>2 REP. MICHAUX: May I follow up?</p> <p>3 SEN. RUCHO: Follow-up, Representative</p> <p>4 Michaux?</p> <p>5 REP. MICHAUX: What did you say just now?</p> <p>6 REP. LEWIS: Sir, I believe you read from</p> <p>7 the opinion, which I don't have before me, that --</p> <p>8 in which the judges said being aware of race does</p> <p>9 not necessarily mean that race was a predominant</p> <p>10 factor, but it doesn't require it. And if that's</p> <p>11 not what you read, understand that you have the</p> <p>12 opinion in front of you, and I don't.</p> <p>13 REP. MICHAUX: What they're saying is it</p> <p>14 cannot be a predominant factor, Mr. Lewis, but you</p> <p>15 can use race.</p> <p>16 SEN. RUCHO: Representative Michaux, I</p> <p>17 think what Senator -- Representative Lewis is</p> <p>18 saying is you can use race, but it doesn't require</p> <p>19 you to use race.</p> <p>20 REP. MICHAUX: It says you can use race,</p> <p>21 but it must not be the predominant factor.</p> <p>22 REP. LEWIS: Mr. Chairman, I would say</p> <p>23 "can use" does not say "must use." Therefore, I</p> <p>24 would move the adoption of this criteria.</p> <p>25 SEN. RUCHO: Representative Hager,</p>	<p style="text-align: right;">40</p> <p>1 choice.</p> <p>2 We know that this three-judge panel has</p> <p>3 the power of its own to draw districts, and we can</p> <p>4 play these games with them. I thought that as a</p> <p>5 body from the standpoint of letting the</p> <p>6 Legislature, the reason that we ordered -- or at</p> <p>7 least required that the Court, if reversing these</p> <p>8 districts, sent it back to the Legislature to have</p> <p>9 an opportunity or a shot at fixing it is because it</p> <p>10 was felt that the Legislature could fix it, but I</p> <p>11 can assure you that if you go about doing this,</p> <p>12 then those three gentlemen are going to draw</p> <p>13 districts for you.</p> <p>14 Maybe that's what you want, and if that's</p> <p>15 what you want, I will vote with you on this</p> <p>16 amendment, but I think that you -- that it's</p> <p>17 transparent the game that you're trying to play.</p> <p>18 Some of us do strongly believe that we should move</p> <p>19 away from using race in making any decision in</p> <p>20 American life, but we also believe that you comply</p> <p>21 with the law until we get to that point, and I</p> <p>22 think that you're aware of the fact, just as I am,</p> <p>23 that if you take this blind approach, you're in</p> <p>24 direct violation of Section 2 of the Voting Rights</p> <p>25 Act. And so I'm just -- I just say that to you.</p>
<p style="text-align: right;">39</p> <p>1 please?</p> <p>2 REP. HAGER: Thank you, Mr. Chairman.</p> <p>3 Representative Lewis, I want to commend you on</p> <p>4 the -- when you said only when necessary when you</p> <p>5 split districts and precincts. I come from a</p> <p>6 district and precinct prior to these maps. My</p> <p>7 precinct was split, and we worked it out, like I</p> <p>8 said, and I appreciate what you said about the</p> <p>9 sophistication of the voters. It was there, but</p> <p>10 this criteria does help that situation, and prior</p> <p>11 to these maps, we see -- we saw that with the</p> <p>12 previous maps in Rutherford County, so thank you</p> <p>13 very much.</p> <p>14 SEN. RUCHO: I'm sorry. I've got Senator</p> <p>15 Blue. Excuse me.</p> <p>16 SEN. BLUE: Just a comment, since the</p> <p>17 motion to adopt it has been made. Mr. Chairman, I</p> <p>18 agree totally with Representative Stam. As I told</p> <p>19 Representative Lewis, there are places in this</p> <p>20 state where considering race in redrawing districts</p> <p>21 is inappropriate under the Voting Rights Act, under</p> <p>22 the 14th Amendment. There are places in this state</p> <p>23 where the Voting Rights Act requires that race be</p> <p>24 considered to some degree to ensure that, based on</p> <p>25 history, that minorities can elect people of their</p>	<p style="text-align: right;">41</p> <p>1 I'm going to vote against this proposal.</p> <p>2 You'll probably withdraw it, given the debate, but</p> <p>3 I'm going to vote against it because I think that</p> <p>4 it's showing disrespect for the law as it exists</p> <p>5 and disrespect for this three-judge federal</p> <p>6 district court.</p> <p>7 REP. LEWIS: Well, Senator --</p> <p>8 SEN. RUCHO: Representative Lewis?</p> <p>9 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>10 I'm going to reiterate my earlier comments to you,</p> <p>11 sir, that in no way has anything that I have said</p> <p>12 had the intent, and I hope not the effect, of</p> <p>13 causing any offense to any member of the federal</p> <p>14 judiciary. I would reiterate the only way to make</p> <p>15 sure that race is not the predominant factor is to</p> <p>16 make sure it's not a factor when the maps are being</p> <p>17 considered.</p> <p>18 This Court -- I'll go one step further.</p> <p>19 With the utmost respect to the Court, this Court</p> <p>20 was shown that race was not a factor that was</p> <p>21 considered in drawing of the 12th, but they still</p> <p>22 found that it was a factor. This is -- this way we</p> <p>23 make sure that in fact, it is not.</p> <p>24 SEN. RUCHO: Members of the committee?</p> <p>25 Senator McKissick?</p>

<p style="text-align: right;">42</p> <p>1 SEN. MCKISSICK: Representative Lewis, 2 are you aware of any racially polarized voting 3 studies which have been conducted since the 2010 4 Census occurred? 5 REP. LEWIS: Senator McKissick, 6 respectfully, I would direct you to the 7 redistricting tab of the General Assembly Web site. 8 I believe there are some studies that are listed 9 there. Certainly there are numerous studies that 10 are referenced in the various lawsuits. I know the 11 General Assembly did commission a study on racially 12 polarized voting. I do not believe the Harris 13 court admitted or considered it. 14 SEN. MCKISSICK: Follow-up, Mr. Chair. 15 SEN. RUCHO: Follow-up. 16 SEN. MCKISSICK: Is it not possible to go 17 back and find that data, which is reasonably 18 current, since it was done since 2010, to examine 19 the racially polarized voting patterns throughout 20 the state, because different parts of the state are 21 different? Our urban areas have different 22 characteristics, and there's more coalition 23 politics. Other parts of our state, racially 24 polarized voting patterns are present, and continue 25 to exist.</p>	<p style="text-align: right;">44</p> <p>1 REP. MCGRADY: Second. 2 SEN. RUCHO: Second, Representative 3 McGrady. Any additional discussion? 4 (No response.) 5 SEN. RUCHO: All right. Seeing none, we 6 can -- Mr. Clerk, would you begin the roll call? 7 CLERK: Lewis? 8 REP. LEWIS: Aye. 9 CLERK: Jones? 10 REP. JONES: Aye. 11 CLERK: Brawley? 12 REP. BRAWLEY: Aye. 13 CLERK: Cotham? 14 REP. COTHAM: No. 15 CLERK: Davis? 16 REP. DAVIS: Aye. 17 CLERK: Farmer-Butterfield? 18 REP. FARMER-BUTTERFIELD: No. 19 CLERK: Hager? 20 REP. HAGER: Aye. 21 CLERK: Hanes? 22 REP. HANES: No. 23 CLERK: Hardister? 24 REP. HARDISTER: Aye. 25 CLERK: Hurley?</p>
<p style="text-align: right;">43</p> <p>1 I would suggest that we go back and look 2 at those studies, analyze them, and use those 3 studies as part of the database that would be used 4 to move forward in drawing these districts. Any 5 reason why we cannot do that? 6 REP. LEWIS: Respectfully, sir, I may -- 7 I may agree with you, but the Court does not. 8 SEN. MCKISSICK: And I'd have to 9 respectfully disagree on that. 10 REP. LEWIS: Noted. 11 SEN. RUCHO: Senator Clark? 12 SEN. CLARK: Thank you, Mr. Chairman. 13 With regard to the language on the voting districts 14 in here, would it not be more appropriate to 15 separate that and have it stand alone as its own 16 criteria? I don't understand the rationale for 17 including it in the criteria about political data. 18 REP. LEWIS: Senator, I appreciate that 19 question. Frankly, we could have had an additional 20 criteria. I prefer just to let it stay as it is. 21 SEN. RUCHO: Excuse me. Representative 22 Lewis, do you make the motion to adopt the 23 political data criteria? 24 REP. LEWIS: I do, Mr. Chairman. 25 SEN. RUCHO: All right.</p>	<p style="text-align: right;">45</p> <p>1 REP. HURLEY: Aye. 2 CLERK: Jackson? 3 REP. JACKSON: No. 4 CLERK: Johnson? 5 REP. JOHNSON: Aye. 6 CLERK: Jordan? 7 REP. JORDAN: Aye. 8 CLERK: McGrady? 9 REP. MCGRADY: Aye. 10 CLERK: Michaux? 11 REP. MICHAUX: No. 12 CLERK: Moore? 13 REP. MOORE: No. 14 CLERK: Stam? 15 REP. STAM: Aye. 16 CLERK: Stevens? 17 REP. STEVENS: Aye. 18 CLERK: Rucho? 19 SEN. RUCHO: Aye. 20 CLERK: Apodaca? 21 SEN. APODACA: Aye. 22 CLERK: Barefoot? 23 SEN. BAREFOOT: Aye. 24 CLERK: Blue? 25 SEN. BLUE: No.</p>

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<p>1 CLERK: Brown? 2 SEN. BROWN: Aye. 3 CLERK: Clark? 4 SEN. CLARK: No. 5 CLERK: Harrington? 6 SEN. HARRINGTON: Aye. 7 CLERK: Hise? 8 SEN. HISE: Aye. 9 CLERK: Jackson? 10 SEN. JACKSON: Aye. 11 CLERK: Lee? 12 SEN. LEE: Aye. 13 CLERK: McKissick? 14 SEN. MCKISSICK: No. 15 CLERK: Randleman? 16 SEN. RANDLEMAN: Aye. 17 CLERK: Sanderson? 18 SEN. SANDERSON: Aye. 19 CLERK: Smith? 20 SEN. SMITH: No. 21 CLERK: Smith-Ingram? 22 SEN. SMITH-INGRAM: Nay. 23 CLERK: Wells? 24 SEN. WELLS: Aye. 25 SEN. RUCHO: What have we got?</p>	<p>1 drawing of the maps, I would propose that to the 2 extent possible, the map drawers create a map which 3 is perhaps likely to elect 10 Republicans and 3 4 Democrats. I acknowledge freely that this would be 5 a political gerrymander, which is not against the 6 law. 7 SEN. RUCHO: All right. Members of the 8 committee, any questions? Senator Blue? 9 SEN. BLUE: Just one, Mr. Chairman, and 10 this is a point of order since you've got my friend 11 the rules committee chairman up there. What are 12 the rules under which this committee is operating, 13 House or Senate? If it's the Senate -- and if it's 14 neither, where do they come from, but if it's the 15 Senate, aren't ayes and nays prohibited in 16 committee votes? 17 SEN. APODACA: The chairs agreed we'd 18 operate under the House rules, and I can tell you I 19 wasn't here for that, but they did. 20 (Laughter.) 21 SEN. RUCHO: All right. Senator Blue? 22 SEN. BLUE: One follow-up. 23 SEN. RUCHO: Let me have your attention. 24 SEN. BLUE: Since I'm not familiar with 25 the House rules anymore, there is a permitted</p>
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<p>1 CLERK: Nine nays. Nine nays. (Pause.) 2 There's 11. 11 out of 34. 3 SEN. RUCHO: 11 out of 34 nays. Okay. 4 The result of that is 23 ayes, 11 nos, and two were 5 not present. Okay. Representative Lewis? 6 REP. LEWIS: Mr. Chairman, I would ask -- 7 with your permission, I've asked the Sergeants-at- 8 Arms to distribute the criteria labeled "Partisan 9 Advantage." If you could direct the staff to read 10 that, I'd be happy to speak on it. 11 SEN. RUCHO: Ms. Churchill, would you 12 read the one on partisan advantage? 13 MS. CHURCHILL: "Partisan Advantage: The 14 partisan makeup of the Congressional delegation 15 under the enacted plan is 10 Republicans and 3 16 Democrats. The committee shall make reasonable 17 efforts to construct districts in the 2016 18 contingent Congressional plan to maintain the 19 current partisan makeup of North Carolina's 20 Congressional delegation." 21 SEN. RUCHO: Representative Lewis, 22 explain. 23 REP. LEWIS: Mr. Chairman, the 24 explanation of this is reasonably simple. As we 25 are allowed to consider political data in the</p>	<p>1 abstention in the ayes and nos under the House 2 rules; is there not? 3 SEN. APODACA: Mr. Chairman? 4 SEN. RUCHO: Representative Stam, if you 5 can respond to that question? 6 REP. STAM: I could. There is no such 7 rule under House rules now or when Senator Blue was 8 the Speaker of the House. 9 SEN. RUCHO: Senator Blue, did you get 10 your answer? 11 SEN. BLUE: I got an answer. 12 (Laughter.) 13 SEN. RUCHO: Good. Thank you. Okay. 14 Members of the committee, let's pay close attention 15 to this. Senator McKissick? 16 SEN. MCKISSICK: In looking at this 17 particular criteria, I mean, certainly partisan 18 advantage is a legitimate consideration, but I 19 don't know why, based upon the number of Democratic 20 registered voters, Republican registered voters and 21 unaffiliated voters in this state we would want to 22 ever sit and ingrain as a criteria for 23 redistricting that we would only allow one party 3 24 seats in Congress, and the other one, 10 in 25 Congress, when not very long ago, before 2010, we</p>

<p style="text-align: right;">50</p> <p>1 had 7 Democrats and 5 Republicans, so I'm trying to</p> <p>2 understand why you feel this would be fair,</p> <p>3 reasonable, and balanced in terms of voter</p> <p>4 registrations in this state as it is currently</p> <p>5 divided.</p> <p>6 REP. LEWIS: Thank you for your question,</p> <p>7 Senator. I propose that we draw the maps to give a</p> <p>8 partisan advantage to 10 Republicans and 3</p> <p>9 Democrats because I do not believe it's possible to</p> <p>10 draw a map with 11 Republicans and 2 Democrats.</p> <p>11 (Laughter.)</p> <p>12 SEN. MCKISSICK: Follow-up, if I could.</p> <p>13 SEN. RUCHO: Follow-up.</p> <p>14 SEN. MCKISSICK: Were you aware of the</p> <p>15 fact that in the 2012 election cycle, if you total</p> <p>16 the total number of votes received by Democrats</p> <p>17 running for Congress versus the total number of</p> <p>18 votes cast for Republicans running for Congress,</p> <p>19 that Democratic candidates had a higher number of</p> <p>20 total votes, but ended up with fewer seats? Were</p> <p>21 you aware of that factor in drawing up this</p> <p>22 criteria?</p> <p>23 REP. LEWIS: I am aware, Senator -- first</p> <p>24 of all, thank you for your question. I am aware</p> <p>25 that there are numerous examples, especially</p>	<p style="text-align: right;">52</p> <p>1 Come up with something different. It</p> <p>2 could be 5 Democratic seats, and there's no reason</p> <p>3 why that couldn't be accomplished. It could be 6</p> <p>4 Democratic seats and still give the Republicans an</p> <p>5 edge, but to say you're going to marginalize with</p> <p>6 only 3 seats as a criteria, let the voters decide.</p> <p>7 REP. LEWIS: Well, sir, I definitely -- I</p> <p>8 thank you for that comment. Certainly we look</p> <p>9 forward to receiving -- what I'm asking this</p> <p>10 committee to adopt is the maps that this -- that</p> <p>11 the chairs will present to this committee absent a</p> <p>12 stay arriving from the Court. Certainly the</p> <p>13 members of this committee that don't feel this</p> <p>14 balance is appropriate can certainly offer their</p> <p>15 own maps for consideration.</p> <p>16 SEN. RUCHO: Representative Lewis, in the</p> <p>17 case Senator McKissick brought forth, if you see</p> <p>18 some districts that tend to have a larger voter</p> <p>19 turnout than others, that could easily explain what</p> <p>20 Senator McKissick described. Am I not correct?</p> <p>21 REP. LEWIS: Yes, sir. I think that's a</p> <p>22 constant variable in this. If you have an area</p> <p>23 that has a lot of contested races, those areas tend</p> <p>24 to produce more folks to the polls. If you have --</p> <p>25 you know, we don't want to get into the Electoral</p>
<p style="text-align: right;">51</p> <p>1 through the 2000s, when the majority of seats went</p> <p>2 to a party that had the fewer votes. We elect our</p> <p>3 representatives based on a system of drawing</p> <p>4 districts and the people in those districts being</p> <p>5 able to vote. We do not elect at large. I know</p> <p>6 you're very much aware of that, and we will -- this</p> <p>7 will maintain that system.</p> <p>8 SEN. MCKISSICK: Last follow-up, Mr.</p> <p>9 Chairman.</p> <p>10 SEN. RUCHO: Follow-up. Last follow-up.</p> <p>11 SEN. MCKISSICK: I would simply say this:</p> <p>12 If we were looking at a fair and reasonable</p> <p>13 division as a criteria moving forward, it wouldn't</p> <p>14 necessarily have to be an even division. It</p> <p>15 could -- obviously, since majority -- Republicans</p> <p>16 are a majority now, give Republicans a slight edge,</p> <p>17 but to come up with such an imbalance in a split I</p> <p>18 think is highly inappropriate. It's unfair. It</p> <p>19 does not recognize the way votes have been cast in</p> <p>20 this state as recently as 2012. It doesn't</p> <p>21 recognize the division of registered voters in this</p> <p>22 state between Democrats, Republicans, and</p> <p>23 Independents, and it's really a matter of political</p> <p>24 gerrymandering in the worst sense in which we can</p> <p>25 do so.</p>	<p style="text-align: right;">53</p> <p>1 College, but I can remember this debate's been</p> <p>2 going on since 2000 because of the use -- you know,</p> <p>3 there are times -- do you maximize or, for lack of</p> <p>4 a more polite term, do you pump up or boost up</p> <p>5 votes in certain areas to try and create the larger</p> <p>6 cumulative total, or do you file, run, and win in</p> <p>7 the districts in which you live? Our system has</p> <p>8 historically been the latter.</p> <p>9 SEN. RUCHO: I have a follow-up there.</p> <p>10 Senator McKissick, go ahead.</p> <p>11 SEN. MCKISSICK: Yeah. Simply this: I</p> <p>12 think what voters want are more competitive</p> <p>13 districts, more competitive districts where they</p> <p>14 have a clear choice between a Democrat, a</p> <p>15 Republican, and perhaps an unaffiliated candidate</p> <p>16 that's running, but not ones that are gerrymandered</p> <p>17 to give one party or the other just a clear</p> <p>18 partisan advantage. More competitive districts, I</p> <p>19 support completely, but that means drawing the maps</p> <p>20 in a way where you're not from the outset</p> <p>21 establishing criteria that gives one party an</p> <p>22 unfair advantage.</p> <p>23 SEN. RUCHO: Representative Lewis?</p> <p>24 REP. LEWIS: Mr. Chairman, the only thing</p> <p>25 that I could add is that we want to make clear that</p>

<p style="text-align: right;">54</p> <p>1 we to the extent are going to use political data in</p> <p>2 drawing this map, it is to gain partisan advantage</p> <p>3 on the map. I want that criteria to be clearly</p> <p>4 stated and understood. I have the utmost respect</p> <p>5 for those that do not agree with this particular</p> <p>6 balance.</p> <p>7 I will say -- and the gentleman from</p> <p>8 Durham did not say this, but I will say that during</p> <p>9 the public comment yesterday, more than one speaker</p> <p>10 referred to, "Can't we just draw them where there's</p> <p>11 5 this way or 6 that way?" That is partisan</p> <p>12 gerrymandering if you're drawing 5 and 7 or 6</p> <p>13 and -- whatever it is. I'm making clear that our</p> <p>14 intent is to use -- is to use the political data we</p> <p>15 have to our partisan advantage.</p> <p>16 SEN. RUCHO: Representative Michaux?</p> <p>17 REP. MICHAUX: Yeah. Mr. Chairman, you</p> <p>18 know if we were where you are today and we came up</p> <p>19 with this idea, you-all would be jumping all over</p> <p>20 the place, trying to dissuade us from that. First</p> <p>21 you want to -- you really want to dissuade race</p> <p>22 from being put in here. Now you want to make sure</p> <p>23 that you keep your 10 to 3 advantage, the same</p> <p>24 situation that got you in trouble before, and now</p> <p>25 you're going to -- what you're telling us is, "We</p>	<p style="text-align: right;">56</p> <p>1 For example, near a military base, they have much</p> <p>2 fewer voters than the population -- in other words,</p> <p>3 it's a bogus statistic, so I don't use it anymore.</p> <p>4 SEN. RUCHO: Thank you. I've got</p> <p>5 Representative Hager.</p> <p>6 REP. HAGER: Thank you, Mr. Chairman.</p> <p>7 You know I haven't been here long, but I guess in</p> <p>8 the House, I've become one of the more senior</p> <p>9 members with my colleagues that came in in 2011,</p> <p>10 but, you know, I got to thinking -- and I have the</p> <p>11 utmost respect for Senator McKissick and</p> <p>12 Representative Michaux, but, you know, if I beat my</p> <p>13 dog every day for 4 or 5 years and then I quit</p> <p>14 doing it and I told David to quit beating his dog,</p> <p>15 you'd consider me a little bit hypocritical,</p> <p>16 wouldn't you, David?</p> <p>17 If you look at that map on the wall and</p> <p>18 look at the 1992 map and look at District 10 and</p> <p>19 District 1, District 10 is my district now. Look</p> <p>20 at where we've come with District 10 since then. I</p> <p>21 mean, it's just -- it's amazing to me that we can</p> <p>22 argue that we shouldn't -- that the folks that have</p> <p>23 been here for a long time can argue that we</p> <p>24 shouldn't gerrymander these on political reasons,</p> <p>25 and they're some of the same people that developed</p>
<p style="text-align: right;">55</p> <p>1 want you to do this, and you vote for it, and this</p> <p>2 is the way it's going to be," period, end of</p> <p>3 report.</p> <p>4 SEN. RUCHO: Okay. There was no</p> <p>5 question, I don't think, so -- unless you want to</p> <p>6 respond to his comment.</p> <p>7 REP. LEWIS: No.</p> <p>8 SEN. RUCHO: Okay. I've got</p> <p>9 Representative Stam first.</p> <p>10 REP. STAM: Yes. I'd like to share a</p> <p>11 statistic that I haven't used in about 10 years,</p> <p>12 but I'll tell you why. During the last</p> <p>13 redistricting by the other party in 2004, I did</p> <p>14 jump up and down because I saw what was coming. In</p> <p>15 the election of 2004 for the House -- write these</p> <p>16 statistics down -- 52 percent of the voters chose</p> <p>17 the Republican candidate, 44 percent, the</p> <p>18 Democratic candidate, and 4 percent, Libertarian.</p> <p>19 Well, that should be a landslide for Republicans,</p> <p>20 but it ended up that we were in the minority, 57 to</p> <p>21 63.</p> <p>22 The reason I stopped using those type of</p> <p>23 statistics is I realized that it can be totally</p> <p>24 skewed by whoever happens to not have a candidate</p> <p>25 opposing that person. That shows a huge advantage.</p>	<p style="text-align: right;">57</p> <p>1 that map of District 1 and District 10 in 1992.</p> <p>2 SEN. RUCHO: Thank you. Any additional</p> <p>3 questions? Senator Smith-Ingram?</p> <p>4 SEN. SMITH-INGRAM: Thank you, Mr. Chair.</p> <p>5 Can you be specific as to what constitutes partisan</p> <p>6 advantage? Do we have to tie it to a number?</p> <p>7 REP. LEWIS: No, ma'am, but I will --</p> <p>8 first of all, thank you for the question. To</p> <p>9 perhaps expound on it a bit, this would -- this</p> <p>10 would contemplate looking at the political data,</p> <p>11 which was an earlier criteria adopted by this</p> <p>12 committee, and as you draw the lines, if you're</p> <p>13 trying to give a partisan advantage, you would want</p> <p>14 to draw the lines so that more of the whole VTDs</p> <p>15 voted for the Republican on the ballot than they</p> <p>16 did the Democrat, if that answers your question.</p> <p>17 SEN. SMITH-INGRAM: I think that --</p> <p>18 SEN. RUCHO: Follow-up?</p> <p>19 SEN. SMITH-INGRAM: Thank you. Follow-</p> <p>20 up. It answers about 50 percent of my question.</p> <p>21 If I could ask you another one, maybe a different</p> <p>22 way? You threw out some numbers. Would there not</p> <p>23 be partisan advantage with 8/5?</p> <p>24 REP. LEWIS: Thank you for that question,</p> <p>25 Senator. I would point out that indeed, you could</p>

<p style="text-align: right;">58</p> <p>1 use political numbers to draw a partisan -- to draw 2 districts in which 8 Republicans would win or 5 3 Democrats. I'm saying to the extent that you can, 4 make it 10/3. 5 SEN. SMITH-INGRAM: Last follow-up. 6 SEN. RUCHO: Last follow-up. 7 SEN. SMITH-INGRAM: Just a statement. I 8 am concerned that we are trying to mimic the 9 outcome of the previous election that never existed 10 for a very long time in North Carolina until this 11 district was redrawn in 2011. The challenge here 12 is we are balancing where we are with where we have 13 been historically, but at the end of the day, we 14 are elected to come together, to work together, to 15 serve the constituents and citizens of North 16 Carolina. This is one of the concerns resonated 17 yesterday, and many of us have it here. We are 18 drawing these lines so that we get to pick our 19 voters as opposed to them choosing us. It is 20 unfair. It should not be perpetuated in this 21 process, and I will not be supporting it. 22 SEN. RUCHO: Thank you. Representative 23 Jones? 24 REP. JONES: Thank you, Mr. Chair. I 25 appreciate it. I want to say how much I have</p>	<p style="text-align: right;">60</p> <p>1 hearing them come from today. We never heard those 2 comments for decades and decades and decades in 3 North Carolina, whether it was the media, whether 4 it was the majority party, whomever, and so I guess 5 the process is what it is. 6 I'm glad that we have had some court 7 decisions that have led to what I think is a lot 8 less gerrymandering than what we had in prior 9 decades, where we -- now we do have single-member 10 districts. Now we do have where we don't just 11 split counties in any possible way, and we have the 12 pod system and things like that, so I really take 13 offense when I hear those that say that somehow the 14 political gerrymandering of today is greater than 15 somehow it was in prior years, when anybody that 16 goes back and studies the history knows that that's 17 simply not the case. 18 That's my comment, and I will ask I guess 19 a question for you, Representative Lewis. Is it 20 possible that people might choose to vote for a 21 candidate that is of a different political party 22 than what their political affiliation is? 23 REP. LEWIS: Well, thank you for that 24 question, Representative Jones. Of course it is. 25 I mean, we all offer ourselves, and the voters in</p>
<p style="text-align: right;">59</p> <p>1 enjoyed this discussion about -- about 2 gerrymandering. You know, that's a word that seems 3 to me, as someone who has lived in North Carolina 4 for all my life and has really kind of studied the 5 political process particularly over the last few 6 decades, a word that was never really used until 7 somehow the Republicans came to a majority in 2010. 8 Just as we're taking this little trip 9 down memory lane for just a moment, I -- I remember 10 things like multi-member districts in North 11 Carolina when we were drawing the legislature. I 12 thought what an extreme opportunity that was to 13 gerrymander. 14 I saw it happen in my own area where, you 15 know, we couldn't do single-member districts. We 16 couldn't even do double-member districts. 17 Sometimes it had to be three- or four-member 18 districts in order for the political party in 19 charge at the time, which was the Democratic Party, 20 to gain a political advantage, so Representative 21 Lewis, I appreciate your honesty as you come 22 forward today, and we -- and we explain that 23 political gerrymandering I guess is what it is, but 24 I just find it very interesting to hear some of the 25 comments coming from some of the avenues that we're</p>	<p style="text-align: right;">61</p> <p>1 our districts decide that we best represent what we 2 believe the direction of the government should be 3 and that's how they cast their votes, so certainly 4 a person is free to vote ever how they choose to 5 vote. 6 REP. JONES: Well, that's what I think, 7 and I think regardless how you draw these 8 districts -- you know, I come from an area where I 9 can remember a time where voting for the Democratic 10 party was extremely -- extremely high, and that 11 time has changed, and those votes have changed. A 12 lot of people that I can tell don't necessarily 13 vote for the same party that they're registered, 14 and so I -- you know, I think we ought to respect 15 the voters as individuals, and whether they're 16 registered Democrat, Republican, Libertarian, 17 unaffiliated, whatever, recognize that they do have 18 an opportunity to vote for any candidate that is on 19 the ballot before them. I appreciate your answer, 20 and I appreciate your honesty and integrity and 21 going forward with the process. 22 SEN. RUCHO: Thank you, Representative 23 Jones. Senator Clark? 24 SEN. CLARK: Thank you, Mr. Chairman. 25 I'm having difficulty understanding why I should</p>

<p style="text-align: right;">62</p> <p>1 agree to vote for maps to bake in partisan 2 advantage that was achieved through the use of 3 unconstitutional maps. Could you explain that to 4 me?</p> <p>5 REP. LEWIS: Well, to be clear, sir, 6 we -- we are proposing that the maps that are drawn 7 now under this criteria which we have passed a 8 plank of, and continue to move forward, one of the 9 goals in drawing the map will be to preserve the 10 10/3. With all due respect, I've listened to this, 11 and we can of course continue to discuss this as 12 long as the committee wants to. It's always sort 13 of amazed me that if the map elects one side, the 14 other side considers -- considers it a gerrymander, 15 and something bad. If it elects their side, they 16 consider it a work of art, and good government, so 17 this is saying that one of the goals will be to 18 elect -- to speak directly to your point, the goal 19 is to elect 10 Republicans and 3 Democrats.</p> <p>20 SEN. RUCHO: Thank you. Representative 21 Lewis, there was a comment earlier about the 22 districts, the 13 districts that exist, 10 23 presently Republican, and 3 Democrat, and under the 24 circumstances, could you explain a little bit about 25 the makeup of the Republican districts and who</p>	<p style="text-align: right;">64</p> <p>1 competitive. I pointed out before that in the race 2 for attorney general that Attorney General Cooper 3 won nearly all of these. We can go back through 4 this 2011 debate if we'd like to, but I would again 5 maintain that you've got to put forward a good 6 candidate that appeals to the majority of folks, 7 and that the majority of folks in these districts 8 in the enacted plan are not registered Republicans. 9 In fact, to the best of my knowledge, in all but 10 perhaps one, we are the minority in all of the 11 districts.</p> <p>12 SEN. RUCHO: Thank you. Okay, 13 Representative Jackson?</p> <p>14 REP. JACKSON: Thank you, Mr. Chairman. 15 Senator Clark took one of my points that I was 16 going to make, but part of my uneasiness with this 17 is that it refers to the current Congressional 18 plan. I think you could make reference just saying 19 that you want to do it to a partisan advantage and 20 maximize Republican members, and I could agree with 21 that, I guess, but you have that opportunity.</p> <p>22 I would point out that your maps 23 originally had a 9/4 split, and that any reference 24 to 10/3 is not what your maps were; your maps were 25 a 9/4 split. What you've done is taken out the</p>
<p style="text-align: right;">63</p> <p>1 they're composed of, and what is necessary for that 2 Republican to win an election?</p> <p>3 REP. LEWIS: Thank you for the question, 4 Mr. Chairman. First of all, it would be necessary 5 to go back and review the stat packs and whatnot 6 from the 2011 districts, which are online if 7 anybody would like to do that, but to the best of 8 my knowledge, Republicans hold no majority as far 9 as voter registration in any of those districts.</p> <p>10 It's also -- well, and it is firmly my 11 belief that it's the responsibility of each of the 12 political parties to nominate quality candidates 13 who can appeal to the entire political spectrum. 14 It was pointed out yesterday during the public 15 hearing that the unaffiliated ranks in our state 16 continue to grow. If you don't get them -- if you 17 don't get a large percentage of the unaffiliated 18 vote in most of our districts, you're not going to 19 win, and so I would say that you are required to 20 have a good-quality candidate that appeals to the 21 political expectations of the majority of the folks 22 in that district.</p> <p>23 I can go back, and we can go through some 24 of the points. I do still -- I actually maintain 25 that the districts that we have now are largely</p>	<p style="text-align: right;">65</p> <p>1 2012 election, but that's not my question. 2 My question is, are we going to rank 3 these criteria in any order, because you've used 4 words in this criteria like "reasonable efforts." 5 Well, if -- are the -- how will the mapmakers know 6 what a reasonable effort is? In trying to come up 7 with 10 Republican districts, will they be able to 8 make a reasonable effort that means they can now 9 consider race? Will they be able to make a 10 reasonable effort that means that now they can 11 consider the 2008, 2012 elections? Will they be 12 able to split precincts as part of making a 13 reasonable effort to make a 10/3 split?</p> <p>14 REP. LEWIS: Representative Jackson, 15 thank you for that series of questions. The answer 16 to your question, the first part was -- I'm sorry. 17 Mr. Chairman, I'm sorry.</p> <p>18 SEN. RUCHO: Go ahead, please.</p> <p>19 REP. JACKSON: Will there be any type of 20 ranking of these criteria anywhere?</p> <p>21 REP. LEWIS: No. No is the answer. 22 That's why these criteria are being presented 23 individually and discussed and debated 24 individually. Map -- drawing maps is largely a 25 balancing act. We are trying to specify certain</p>

<p style="text-align: right;">66</p> <p>1 things that you cannot use. You asked about race. 2 You cannot use that, and I apologize; I don't 3 remember what else you asked about, Representative 4 Jackson. 5 REP. JACKSON: Follow-up, Mr. Chairman? 6 SEN. RUCHO: Follow-up. 7 REP. JACKSON: Okay. So it would be your 8 contention, then, that making reasonable efforts 9 would not include violating any of the other 10 criteria that we have passed? 11 REP. LEWIS: Absolutely. Mr. Chairman? 12 SEN. RUCHO: Yes? 13 REP. LEWIS: If there aren't further 14 questions, I move adoption of the 2016 contingent 15 Congressional plan proposed criteria labeled 16 "Partisan Advantage." 17 SEN. RUCHO: All right. 18 REP. JONES: Second. 19 SEN. RUCHO: Representative Jones has 20 seconded. All right, members of the committee, 21 there has been considerable discussion, and if 22 there's any additional thoughts, this is your 23 opportunity. 24 (No response.) 25 SEN. RUCHO: Seeing none, Mr. Clerk,</p>	<p style="text-align: right;">68</p> <p>1 CLERK: Jordan? 2 REP. JORDAN: Aye. 3 CLERK: McGrady? 4 REP. MCGRADY: Aye. 5 CLERK: Michaux? 6 REP. MICHAUX: No. 7 CLERK: Moore? 8 REP. MOORE: No. 9 CLERK: Stam? 10 REP. STAM: Aye. 11 CLERK: Stevens? 12 REP. STEVENS: Aye. 13 CLERK: Rucho? 14 SEN. RUCHO: Aye. 15 CLERK: Apodaca? 16 SEN. APODACA: Aye. 17 CLERK: Barefoot? 18 SEN. BAREFOOT: Aye. 19 CLERK: Blue? 20 SEN. BLUE: No. 21 CLERK: Brown? 22 SEN. BROWN: Aye. 23 CLERK: Clark? 24 SEN. CLARK: No. 25 CLERK: Harrington?</p>
<p style="text-align: right;">67</p> <p>1 please go through the roll. 2 CLERK: Lewis? 3 REP. LEWIS: Aye. 4 CLERK: Jones? 5 REP. JONES: Aye. 6 CLERK: Brawley? 7 REP. BRAWLEY: Aye. 8 CLERK: Cotham? 9 REP. COTHAM: No. 10 CLERK: Davis? 11 REP. DAVIS: Aye. 12 CLERK: Farmer-Butterfield? 13 REP. FARMER-BUTTERFIELD: No. 14 CLERK: Hager? 15 REP. HAGER: Aye. 16 CLERK: Hanes? 17 REP. HANES: No. 18 CLERK: Hardister? 19 REP. HARDISTER: Aye. 20 CLERK: Hurley? 21 REP. HURLEY: Aye. 22 CLERK: Jackson? 23 REP. JACKSON: No. 24 CLERK: Johnson? 25 REP. JOHNSON: Aye.</p>	<p style="text-align: right;">69</p> <p>1 SEN. HARRINGTON: Aye. 2 CLERK: Hise? 3 SEN. HISE: Aye. 4 CLERK: Jackson? 5 SEN. JACKSON: Aye. 6 CLERK: Lee? 7 SEN. LEE: Aye. 8 CLERK: McKissick? 9 SEN. MCKISSICK: No. 10 CLERK: Randleman? 11 SEN. RANDLEMAN: Aye. 12 CLERK: Sanderson? 13 SEN. SANDERSON: Aye. 14 CLERK: Smith? 15 SEN. SMITH: No. 16 CLERK: Smith-Ingram? 17 SEN. SMITH-INGRAM: No. 18 CLERK: Wells? 19 SEN. WELLS: Aye. 20 CLERK: 23-11. 21 SEN. RUCHO: All right, members of the 22 committee, roll call on the "Partisan Advantage" 23 criteria was ayes, 23, nos, 11. 24 We'll be going on to the next one, and 25 that is -- okay, got it. This is the 12th</p>

<p style="text-align: right;">70</p> <p>1 District. Would you, Ms. Churchill, read out --</p> <p>2 read this criteria, please?</p> <p>3 MS. CHURCHILL: "12th District: The</p> <p>4 current General Assembly inherited the</p> <p>5 configuration of the 12th District from past</p> <p>6 General Assemblies. This configuration was</p> <p>7 retained because of the -- because the district had</p> <p>8 already been heavily litigated over the past two</p> <p>9 decades, and ultimately approved by the courts.</p> <p>10 The Harris court has criticized the shape of the</p> <p>11 12th District, citing its serpentine nature. In</p> <p>12 light of this, the committee shall construct</p> <p>13 districts in the 2015 contingent Congressional plan</p> <p>14 that eliminate the current configuration of the</p> <p>15 12th District."</p> <p>16 SEN. RUCHO: And, Representative Lewis,</p> <p>17 would you explain the criteria under the "12th</p> <p>18 District" heading?</p> <p>19 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>20 This largely goes -- I'll try to use my friend from</p> <p>21 Wake, Representative Jackson's, words. As these</p> <p>22 criteria stand on their own and have to be</p> <p>23 considered together, what this is saying is that</p> <p>24 the mapmakers will make an effort to draw the 12th</p> <p>25 Congressional District in a shape that the judges</p>	<p style="text-align: right;">72</p> <p>1 good idea.</p> <p>2 SEN. RUCHO: Members of the -- oh, I'm</p> <p>3 sorry. Go ahead, Chairman Lewis.</p> <p>4 REP. LEWIS: Mr. Chairman, I just -- I</p> <p>5 just wanted to thank Senator Blue for his words.</p> <p>6 I'm glad that after two decades of drawing maps,</p> <p>7 we've found something we can agree on.</p> <p>8 SEN. RUCHO: All right, members of the</p> <p>9 committee. Senator McKissick?</p> <p>10 SEN. MCKISSICK: While I appreciate the</p> <p>11 fact that the 12th District has an unusual shaped</p> <p>12 appearance, I'm also aware of the fact that it's</p> <p>13 gone up before the Supreme Court previously, and</p> <p>14 when I think of the fact that one of the things we</p> <p>15 have to consider is communities of interest, and</p> <p>16 communities of interest is certainly something</p> <p>17 that's a very valid consideration in drawing</p> <p>18 Congressional districts, and I've heard it stated</p> <p>19 on numerous occasions that communities of interest</p> <p>20 test here is met and satisfied with the shape being</p> <p>21 what it is today.</p> <p>22 Now, while it may appear a bit</p> <p>23 serpentine, a little bit unusual, I think it's</p> <p>24 possible to reconfigure the district, perhaps to</p> <p>25 make it somewhat more compact, but it links</p>
<p style="text-align: right;">71</p> <p>1 would not consider serpentine.</p> <p>2 SEN. RUCHO: Does that conclude your</p> <p>3 explanation?</p> <p>4 REP. LEWIS: Yes, sir.</p> <p>5 SEN. RUCHO: Okay. Members of the</p> <p>6 committee.</p> <p>7 SEN. BLUE: Mr. Chairman?</p> <p>8 SEN. RUCHO: Senator Blue?</p> <p>9 SEN. BLUE: I want to commend</p> <p>10 Representative Lewis. I agree that the 12th</p> <p>11 District ought to be contiguous, it ought to be</p> <p>12 compact, as all of the other districts in the</p> <p>13 state, and I think a good starting point for</p> <p>14 drawing constitutional maps would be to start with</p> <p>15 the 12th District and make it compact, and let it</p> <p>16 impact the other districts.</p> <p>17 I think differently about the 1st,</p> <p>18 because I think that the law requires it. I have</p> <p>19 no particular love for the shape of any of these</p> <p>20 strange districts, but if you're serious about</p> <p>21 creating a district that's compact, that's</p> <p>22 contiguous, and that covers as few counties as</p> <p>23 possible by not unreasonably splitting county</p> <p>24 lines, by not splitting county lines except where</p> <p>25 necessary to comply with population, I think it's a</p>	<p style="text-align: right;">73</p> <p>1 together significant cores of the urban parts of</p> <p>2 our state along the main street of the state, which</p> <p>3 is now Interstate 85. Interstate 85 is the main</p> <p>4 corridor.</p> <p>5 Those urban areas are linked from</p> <p>6 Charlotte going through Greensboro and back up into</p> <p>7 the Piedmont area of our state, so I would not want</p> <p>8 to abandon it. I'd want to perhaps reconfigure it,</p> <p>9 but keeping in mind the communities of interest</p> <p>10 that it ties together, major urban cores with</p> <p>11 populations that have similar interests and</p> <p>12 concerns, along with major banking centers.</p> <p>13 One of the -- I've heard before that that</p> <p>14 particular district had more banking headquarters</p> <p>15 than any Congressional district in our country, and</p> <p>16 I rely upon that based upon the sources of that</p> <p>17 data, so I would not abandon it; I would simply try</p> <p>18 to reconfigure it, perhaps make it more compact,</p> <p>19 but to respect the communities of interest that it</p> <p>20 does unify.</p> <p>21 SEN. RUCHO: Thank you. Any additional</p> <p>22 questions? Well, let me first say, Representative</p> <p>23 Lewis, do you want to make a comment to that?</p> <p>24 REP. LEWIS: (Shakes head.)</p> <p>25 SEN. RUCHO: Representative Hanes?</p>

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<p>1 REP. HANES: Thank you, Mr. Chairman. I 2 think both the senators have -- have excellent 3 points. I agree especially with Senator Blue and 4 his statements with regard to what we need to be 5 looking at as a whole as we consider what these 6 districts look like. Certainly when it comes to 7 Democrats -- and I know we're trying to avoid the 8 word "race" here, but when it comes to folks who 9 look like me, we want our voices heard everywhere, 10 and so in that regard, part of the way we do that 11 is to put our communities together within our 12 counties. I think while we certainly don't have to 13 abandon what the 12th is right now, certainly we 14 need to be looking at very strongly doing what 15 Senator Blue suggests, and so I will be supporting 16 it. Thank you. 17 SEN. RUCHO: Thank you. Members of the 18 committee, any additional questions or comments? 19 (No response.) 20 SEN. RUCHO: Representative Lewis, do you 21 have a motion? 22 REP. LEWIS: Mr. Chairman, I move that 23 the 2016 contingent Congressional plan proposed 24 criteria labeled "12th District" be adopted. 25 SEN. APODACA: Second.</p>	<p>1 CLERK: Hurley? 2 REP. HURLEY: Aye. 3 CLERK: Jackson? 4 REP. JACKSON: Yes. 5 CLERK: Johnson? 6 REP. JOHNSON: Aye. 7 CLERK: Jordan? 8 REP. JORDAN: Aye. 9 CLERK: McGrady? 10 REP. MCGRADY: Aye. 11 CLERK: Michaux? 12 REP. MICHAUX: Aye. 13 CLERK: Moore? 14 REP. MOORE: Aye. 15 CLERK: Stam? 16 REP. STAM: Aye. 17 CLERK: Stevens? 18 REP. STEVENS: Aye. 19 CLERK: Rucho? 20 SEN. RUCHO: Aye. 21 CLERK: Apodaca? 22 SEN. APODACA: Aye. 23 CLERK: Barefoot? 24 SEN. BAREFOOT: Aye. 25 CLERK: Blue?</p>
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<p>1 SEN. RUCHO: Second by Senator Apodaca. 2 Members of the committee, you have this motion 3 before you. Any questions or comments prior to a 4 roll call vote? 5 (No response.) 6 SEN. RUCHO: Seeing none, Mr. Clerk, 7 would you go through the roll call, please? 8 CLERK: Lewis? 9 REP. LEWIS: Aye. 10 CLERK: Jones? 11 REP. JONES: Aye. 12 CLERK: Brawley? 13 REP. BRAWLEY: Aye. 14 CLERK: Cotham? 15 REP. COTHAM: Yes. 16 CLERK: Davis? 17 REP. DAVIS: Aye. 18 CLERK: Farmer-Butterfield? 19 REP. FARMER-BUTTERFIELD: Yes. 20 CLERK: Hager? 21 REP. HAGER: Aye. 22 CLERK: Hanes? 23 REP. HANES: Yes. 24 CLERK: Hardister? 25 REP. HARDISTER: Aye.</p>	<p>1 SEN. BLUE: Aye. 2 CLERK: Brown? 3 SEN. BROWN: Aye. 4 CLERK: Clark? 5 SEN. CLARK: Aye. 6 CLERK: Harrington? 7 SEN. HARRINGTON: Aye. 8 CLERK: Hise? 9 SEN. HISE: Aye. 10 CLERK: Jackson? 11 SEN. JACKSON: Aye. 12 CLERK: Lee? 13 SEN. LEE: Aye. 14 CLERK: McKissick? 15 SEN. MCKISSICK: No. 16 CLERK: Randleman? 17 SEN. RANDLEMAN: Aye. 18 CLERK: Sanderson? 19 SEN. SANDERSON: Aye. 20 CLERK: Smith? 21 SEN. SMITH: Aye. 22 CLERK: Smith-Ingram? 23 SEN. SMITH-INGRAM: Aye. 24 CLERK: Wells? 25 SEN. WELLS: Aye.</p>

<p style="text-align: right;">78</p> <p>1 CLERK: One no.</p> <p>2 SEN. RUCHO: So 33 aye and 1 no, correct?</p> <p>3 CLERK: Yes.</p> <p>4 SEN. RUCHO: Members of the committee,</p> <p>5 the roll call vote on that, the criteria for the</p> <p>6 12th District adoption, is 33 aye and 1 no. All</p> <p>7 right.</p> <p>8 Before we go on to the next criteria,</p> <p>9 I'll make a statement to the committee that under</p> <p>10 the House rules, there is a way of amending or</p> <p>11 submitting an amendment forward. If you'll contact</p> <p>12 Ms. Churchill on this, she will assist you in doing</p> <p>13 so if you desire.</p> <p>14 All right, that being said,</p> <p>15 Representative Lewis, before us is --</p> <p>16 REP. LEWIS: "Compactness."</p> <p>17 SEN. RUCHO: -- "Compactness." All</p> <p>18 right. Please, Ms. Churchill, would you read that?</p> <p>19 MS. CHURCHILL: "Compactness: In light</p> <p>20 of the Harris court's criticism of the compactness</p> <p>21 of the 1st and 12th Districts, the committee shall</p> <p>22 make reasonable efforts to construct districts in</p> <p>23 the 2016 contingent Congressional plan that improve</p> <p>24 the compactness of the current districts and keep</p> <p>25 more counties and VTDs whole as compared to the</p>	<p style="text-align: right;">80</p> <p>1 Mecklenburg. There's only 1 in Wake, I believe.</p> <p>2 There's only 1 in Wake, and so 2 counties. There</p> <p>3 may be 2 in Guilford. Is there any other county</p> <p>4 with more than 1 incumbent?</p> <p>5 REP. LEWIS: Senator Blue, thank you for</p> <p>6 that question, and candidly, I don't believe so,</p> <p>7 but I don't know that, either.</p> <p>8 SEN. RUCHO: Follow-up?</p> <p>9 SEN. BLUE: So if the only place that you</p> <p>10 would worry about splitting the county to protect</p> <p>11 the incumbency would be Mecklenburg County based on</p> <p>12 the current layout -- I know that there are some of</p> <p>13 us counties that are split 3 and 4 different ways,</p> <p>14 but I know in Wake County, there's only 1 resident</p> <p>15 Congressperson, although we have 4 districts here,</p> <p>16 and I think that the same is true of every other</p> <p>17 county except Mecklenburg, with the exception of</p> <p>18 Guilford. There may be 2 from Guilford. I'm not</p> <p>19 sure, but nevertheless, why should we split</p> <p>20 counties if you don't have to, to protect the</p> <p>21 incumbents? Why shouldn't we leave counties whole</p> <p>22 all over the state except where you have to split</p> <p>23 them because of population?</p> <p>24 SEN. RUCHO: Representative Lewis?</p> <p>25 REP. LEWIS: Thank you for that question,</p>
<p style="text-align: right;">79</p> <p>1 current enacted plan. Division of counties shall</p> <p>2 only be made for reasons of equalizing population,</p> <p>3 consideration of incumbency, and political impact.</p> <p>4 Reasonable effort shall be made not to divide a</p> <p>5 county into more than two districts."</p> <p>6 SEN. RUCHO: Representative Lewis, would</p> <p>7 you please explain the "Compactness" criteria?</p> <p>8 REP. LEWIS: Thank you, Mr. Chairman. To</p> <p>9 be clear, the -- trying to explain compactness is</p> <p>10 very difficult, as I don't know that there is a</p> <p>11 hard-and-fast definition that I can offer to the</p> <p>12 committee. The way that I will interpret it is</p> <p>13 again trying to keep as many counties whole as</p> <p>14 possible, to split as few precincts as possible,</p> <p>15 and again, only to -- and to only do that to</p> <p>16 equalize population.</p> <p>17 I would -- I would point out, again going</p> <p>18 back to my friend, Representative Jackson's</p> <p>19 question, these criteria kind of layer on each</p> <p>20 other, and so I would -- I would urge the committee</p> <p>21 to adopt the guideline on compactness.</p> <p>22 SEN. RUCHO: Senator Blue?</p> <p>23 SEN. BLUE: Thank you. Representative</p> <p>24 Lewis, other than in 3 counties, are there multiple</p> <p>25 incumbents? I know that there's more than 1 in</p>	<p style="text-align: right;">81</p> <p>1 Senator Blue. My response would simply be that</p> <p>2 considering where incumbents live, and for lack of</p> <p>3 a better way to say it, the protection of</p> <p>4 incumbents has always been an accepted political</p> <p>5 practice in drawing maps. This does not require us</p> <p>6 to do that. This simply says that that could be</p> <p>7 one of the reasons that a county would be split.</p> <p>8 The most important part of this is trying</p> <p>9 to establish that we won't split counties more than</p> <p>10 2 times, and we've already passed a criteria that</p> <p>11 this reiterates, that the biggest reason a county</p> <p>12 should be split is only to equalize the population</p> <p>13 between the districts.</p> <p>14 SEN. BLUE: Follow-up.</p> <p>15 SEN. RUCHO: Follow-up.</p> <p>16 SEN. BLUE: And I agree with that, but</p> <p>17 I'm saying under the current scenario -- and in</p> <p>18 fact, I think Mecklenburg is the only county that</p> <p>19 has two Congresspeople, so you could split</p> <p>20 Mecklenburg anyhow because you've got to split it</p> <p>21 because it's got over 750,000, or whatever the</p> <p>22 number is, people. You've got to split Wake;</p> <p>23 you've got to split Mecklenburg. The others could</p> <p>24 be made whole except for population purposes, so</p> <p>25 why would you adopt criteria saying that you're not</p>

<p style="text-align: right;">82</p> <p>1 going to split counties except to protect</p> <p>2 incumbents when you don't have any incumbents to</p> <p>3 protect, and you ultimately say that you will split</p> <p>4 them for political impact, which means that you can</p> <p>5 indiscriminately split counties however you want to</p> <p>6 anyhow if you determine what the political impact</p> <p>7 is? Why would you say that, and why would you put</p> <p>8 that provision in there?</p> <p>9 SEN. RUCHO: Representative --</p> <p>10 SEN. BLUE: And that being said, would</p> <p>11 you be willing to --</p> <p>12 SEN. RUCHO: One question. Let him</p> <p>13 answer this one first, please.</p> <p>14 SEN. BLUE: It's part of the same</p> <p>15 question. That being said, would you be willing to</p> <p>16 strike after the comma and the word "population" on</p> <p>17 the third from the bottom line the phrases</p> <p>18 "consideration of incumbency" and "political</p> <p>19 impact" so that there's a clear signal that you're</p> <p>20 not going to split counties since you don't have to</p> <p>21 split them to protect incumbents, so that you're</p> <p>22 not going to split counties except where you have</p> <p>23 to, to get to the one person, one vote requirement?</p> <p>24 SEN. RUCHO: Representative Lewis, why</p> <p>25 don't you answer his first question first? He</p>	<p style="text-align: right;">84</p> <p>1 SEN. BLUE: If there is no incumbency,</p> <p>2 then incumbents won't be considered in splitting</p> <p>3 districts, and that can't be the reason for</p> <p>4 splitting it. I'm simply saying that when you say</p> <p>5 "political impact," you take away everything else</p> <p>6 you put in that phrase, and if we believe in</p> <p>7 keeping counties whole to the extent possible,</p> <p>8 especially small counties, if we believe in that,</p> <p>9 then all we've got to do is say we're only going to</p> <p>10 split counties to equalize population, and I'm</p> <p>11 wondering why it's so critical that you say</p> <p>12 "political impact," since that phrase is loaded</p> <p>13 with all kinds of subjective determinations, with</p> <p>14 the ability to totally disregard this earlier</p> <p>15 portion saying that you're not going to split</p> <p>16 counties, or you're only going to split counties to</p> <p>17 put them into two districts, because you don't say</p> <p>18 you won't split them; you say you'll make</p> <p>19 reasonable efforts not to. I'm saying why don't we</p> <p>20 have an absolute prohibition on splitting counties</p> <p>21 except when it's necessary to comply with one</p> <p>22 person, one vote?</p> <p>23 REP. LEWIS: Thank you for that question,</p> <p>24 Senator Blue. My response to that would be that we</p> <p>25 will look forward to reviewing maps that you may</p>
<p style="text-align: right;">83</p> <p>1 asked too many questions.</p> <p>2 REP. LEWIS: Senator Blue, thank you for</p> <p>3 that series of inquiries. I do apologize because I</p> <p>4 don't remember exactly what you asked.</p> <p>5 SEN. BLUE: Do you need me to reask it?</p> <p>6 REP. LEWIS: Let me just say that it is</p> <p>7 my intent to split as few counties as we possibly</p> <p>8 can, and to not allow the counties to be divided</p> <p>9 more than two times. Our overarching goal of this,</p> <p>10 as Representative Jackson and I have had some</p> <p>11 continued conversation, all of these criteria kind</p> <p>12 of overlap on each other.</p> <p>13 I would agree with you that equalizing</p> <p>14 population is a mandatory reason that a county may</p> <p>15 have to be split. I would also say that it would</p> <p>16 be dishonest of me to say that political impact</p> <p>17 can't be considered in how you draw districts.</p> <p>18 I don't see any harm in leaving the words</p> <p>19 "consideration of incumbency" because there's no</p> <p>20 requirement that the districts be drawn to include</p> <p>21 the current seated members. It just allows for</p> <p>22 the -- the consideration that they are -- that they</p> <p>23 are in fact there.</p> <p>24 SEN. BLUE: One last follow-up.</p> <p>25 SEN. RUCHO: Last follow-up.</p>	<p style="text-align: right;">85</p> <p>1 submit that follow that criteria. I feel very</p> <p>2 comfortable that we've made clear through this</p> <p>3 process of what our -- what our intents are, and I</p> <p>4 would prefer that this criteria remain as it's</p> <p>5 written.</p> <p>6 SEN. RUCHO: Thank you. Representative</p> <p>7 Jones?</p> <p>8 REP. JONES: Thank you, Mr. Chairman. I</p> <p>9 just wanted to clarify the record that there are</p> <p>10 two Congressmen that live in Guilford County, Mark</p> <p>11 Walker of the 6th District, and Alma Adams of the</p> <p>12 12th District.</p> <p>13 SEN. RUCHO: Okay. I've got -- I've got</p> <p>14 Senator Smith.</p> <p>15 SEN. SMITH: Thank you, Mr. Chairman. I</p> <p>16 certainly appreciate the idea of compactness. I</p> <p>17 very much want to see precincts and counties left</p> <p>18 whole. I would respectfully tell you that in 2011,</p> <p>19 there was a district drawn where an incumbent was</p> <p>20 drawn out. It was the district that I lived in,</p> <p>21 and so the 7th Congressional District drew -- was</p> <p>22 changed to the 8th Congressional District, and the</p> <p>23 Congressman McIntyre, who was the incumbent, was</p> <p>24 drawn out essentially of his own district, and my</p> <p>25 concern is what Senator Blue has said. The idea of</p>

<p style="text-align: right;">86</p> <p>1 compactness is great, but when we leave in this</p> <p>2 other phrase about incumbency, we have taken away</p> <p>3 the other reason, the only reason that really</p> <p>4 should be the case, and that is population.</p> <p>5 REP. LEWIS: Senator, I appreciate that.</p> <p>6 Again, I would state that equalizing population is</p> <p>7 definitely the required reason that a county may</p> <p>8 have to be split. This simply allows for</p> <p>9 consideration of incumbency and consideration of</p> <p>10 political impact. I don't -- I don't see that that</p> <p>11 would interfere with us being able to use</p> <p>12 compactness in drawing the maps.</p> <p>13 SEN. SMITH: Follow-up, Mr. Chair?</p> <p>14 SEN. RUCHO: Follow-up.</p> <p>15 SEN. SMITH: I just would point out that</p> <p>16 population was not the case in 2011, and my concern</p> <p>17 is that if we agree to this and keep this as</p> <p>18 incumbency and political impact, that that will end</p> <p>19 up trumping population, and splitting counties and</p> <p>20 precincts.</p> <p>21 SEN. RUCHO: Thank you. Representative</p> <p>22 Lewis, do you want to comment?</p> <p>23 REP. LEWIS: No.</p> <p>24 SEN. RUCHO: You're all set? Just a</p> <p>25 quick -- is it -- a question for the Chair,</p>	<p style="text-align: right;">88</p> <p>1 Representative Lewis: The way this is drafted now,</p> <p>2 what I'm seeing is a statement of an aspirational</p> <p>3 goal, but not a strict requirement. Is that</p> <p>4 correct, or is that a misreading? It's one thing</p> <p>5 to aspire to accomplish these things, which I</p> <p>6 support. It's another thing if you make it a</p> <p>7 litmus test, so can you clarify that?</p> <p>8 REP. LEWIS: Thank you for that question,</p> <p>9 Senator McKissick. Let me say that this is an</p> <p>10 aspirational goal.</p> <p>11 SEN. MCKISSICK: In which case, I embrace</p> <p>12 it.</p> <p>13 SEN. RUCHO: Okay. From the Chair,</p> <p>14 Senator McKissick [sic], a question that</p> <p>15 Representative Jackson asked earlier, and when you</p> <p>16 talk about the criteria, is it accurate to say that</p> <p>17 all of them are weighted at the same level, and</p> <p>18 it's a matter of harmonizing to try to get to a map</p> <p>19 that meets those criteria?</p> <p>20 (No response.)</p> <p>21 SEN. RUCHO: David?</p> <p>22 REP. LEWIS: I'm sorry, Mr. Chairman.</p> <p>23 SEN. RUCHO: Oh, I'm sorry. From the</p> <p>24 Chair, a question for you.</p> <p>25 REP. LEWIS: Yes, sir?</p>
<p style="text-align: right;">87</p> <p>1 Representative Lewis: Is it a requirement for a</p> <p>2 Congressional candidate to live in the district</p> <p>3 they're running in?</p> <p>4 REP. LEWIS: No. A candidate for</p> <p>5 Congress is not required to reside in the district</p> <p>6 in which they run.</p> <p>7 SEN. RUCHO: Okay, thank you. I've got</p> <p>8 Representative Hager.</p> <p>9 REP. HAGER: Thank you, Mr. Chairman, and</p> <p>10 thank you, Representative Lewis, for -- for this</p> <p>11 particularly, because as I said earlier, Rutherford</p> <p>12 County, prior to the Rucho-Lewis maps that we're</p> <p>13 under today, split Rutherford County between the</p> <p>14 10th and the 11th. Now, I find it -- and I have a</p> <p>15 question for you. I find it very ironic that that</p> <p>16 split for the 11th included -- came down Main</p> <p>17 Street in Rutherfordton to include Walter Dalton's</p> <p>18 house, so the question I have for you is we won't</p> <p>19 split districts depending on who we think may run</p> <p>20 for that Congressional district; would that be</p> <p>21 correct?</p> <p>22 REP. LEWIS: Yes, sir, that's correct.</p> <p>23 SEN. RUCHO: Okay. All right. I've got</p> <p>24 Senator McKissick.</p> <p>25 SEN. MCKISSICK: Let me ask you this,</p>	<p style="text-align: right;">89</p> <p>1 SEN. RUCHO: Based on what Representative</p> <p>2 Jackson asked earlier, all of these criteria listed</p> <p>3 that's being submitted and voted upon, is it fair</p> <p>4 to say that the criteria established are not ranked</p> <p>5 as far as priorities, but are a matter of</p> <p>6 harmonizing until you can get a map that meets</p> <p>7 those criteria?</p> <p>8 REP. LEWIS: That's correct, sir. We are</p> <p>9 seeking aspirational harmony.</p> <p>10 (Laughter.)</p> <p>11 SEN. RUCHO: Okay. Do you have a motion?</p> <p>12 REP. LEWIS: Mr. Chairman, I would move</p> <p>13 that the 2016 contingent Congressional plan</p> <p>14 proposed criteria labeled "Compactness" be adopted</p> <p>15 by the committee.</p> <p>16 SEN. RUCHO: All right. I've got --</p> <p>17 Representative Davis has seconded that motion.</p> <p>18 Members of the committee, any questions, comments</p> <p>19 prior to a roll call vote? Representative Farmer-</p> <p>20 Butterfield?</p> <p>21 REP. FARMER-BUTTERFIELD: Thank you. I</p> <p>22 want to ask about the hearings yesterday and how</p> <p>23 much impact they had on the criteria, if any, based</p> <p>24 on what you're presenting today.</p> <p>25 SEN. RUCHO: Representative Lewis?</p>

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<p>1 REP. LEWIS: Thank you for that -- thank</p> <p>2 you for that inquiry, Representative. I will tell</p> <p>3 you that many things that stand out in my mind are</p> <p>4 do away with the 12th, keep counties whole, all of</p> <p>5 which we've addressed in this, so I would say that</p> <p>6 they had a great deal of impact on the criteria</p> <p>7 that you have before you.</p> <p>8 SEN. RUCHO: All set? Okay. Yes,</p> <p>9 Representative Stevens?</p> <p>10 REP. STEVENS: Thank you, Mr. Chair, and</p> <p>11 I just wanted to commend Representative Lewis and</p> <p>12 perhaps answer some of the things that some of the</p> <p>13 people are talking about, and I'd like to read -- I</p> <p>14 guess it's about one and a half paragraphs of one</p> <p>15 of the most recent redistricting cases in March of</p> <p>16 2015.</p> <p>17 It says, "Now consider the nature of</p> <p>18 those offsetting 'traditional race-neutral</p> <p>19 districting principles.' We have listed several,</p> <p>20 including 'compactness, contiguity, respect for</p> <p>21 political subdivisions or communities defined by</p> <p>22 actual shared interests,' incumbency protection,</p> <p>23 and political affiliation," those things that we've</p> <p>24 done.</p> <p>25 The next paragraph says, "But we have not</p>	<p>1 CLERK: Brawley?</p> <p>2 REP. BRAWLEY: Aye.</p> <p>3 CLERK: Cotham?</p> <p>4 REP. COTHAM: No.</p> <p>5 CLERK: Davis?</p> <p>6 REP. DAVIS: Aye.</p> <p>7 CLERK: Farmer-Butterfield?</p> <p>8 REP. FARMER-BUTTERFIELD: No.</p> <p>9 CLERK: Hager?</p> <p>10 REP. HAGER: Aye.</p> <p>11 CLERK: Hanes?</p> <p>12 REP. HANES: Yes.</p> <p>13 CLERK: Hardister?</p> <p>14 REP. HARDISTER: Aye.</p> <p>15 CLERK: Hurley?</p> <p>16 REP. HURLEY: Aye.</p> <p>17 CLERK: Jackson?</p> <p>18 REP. JACKSON: No.</p> <p>19 CLERK: Johnson?</p> <p>20 REP. JOHNSON: Aye.</p> <p>21 CLERK: Jordan?</p> <p>22 REP. JORDAN: Aye.</p> <p>23 CLERK: McGrady?</p> <p>24 REP. MCGRADY: Aye.</p> <p>25 CLERK: Michaux?</p>
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<p>1 listed equal population objectives. And there is a</p> <p>2 reason for that omission. The reason that equal</p> <p>3 population objectives do not appear on this list of</p> <p>4 'traditional' criteria is that equal population</p> <p>5 objectives play a major -- different role in a</p> <p>6 State's redistricting process. That role is not a</p> <p>7 minor one. Indeed, in light of the Constitution's</p> <p>8 demands, that role may often prove 'predominant' in</p> <p>9 the ordinary sense of that word," because the equal</p> <p>10 population, it goes on to talk about in the voting</p> <p>11 rights districts we really have to take a different</p> <p>12 focus on that, so I commend you for all of the</p> <p>13 criteria you've set forward. It seems to comply</p> <p>14 with the most recent case law.</p> <p>15 SEN. RUCHO: Representative Lewis?</p> <p>16 REP. LEWIS: Yes, sir, Mr. Chairman?</p> <p>17 SEN. RUCHO: All set? We've got a motion</p> <p>18 before us that we approve of the criteria that was</p> <p>19 listed and debated on the compactness. We've had a</p> <p>20 second from Representative Davis. Mr. Clerk, would</p> <p>21 you call the roll?</p> <p>22 CLERK: Lewis?</p> <p>23 REP. LEWIS: Aye.</p> <p>24 CLERK: Jones?</p> <p>25 REP. JONES: Aye.</p>	<p>1 REP. MICHAUX: No.</p> <p>2 CLERK: Moore?</p> <p>3 REP. MOORE: Yes.</p> <p>4 CLERK: Stam?</p> <p>5 REP. STAM: Yes.</p> <p>6 CLERK: Stevens?</p> <p>7 REP. STEVENS: Yes.</p> <p>8 CLERK: Rucho?</p> <p>9 SEN. RUCHO: Aye.</p> <p>10 CLERK: Apodaca?</p> <p>11 SEN. APODACA: Aye.</p> <p>12 CLERK: Barefoot?</p> <p>13 SEN. BAREFOOT: Aye.</p> <p>14 CLERK: Blue?</p> <p>15 SEN. BLUE: No.</p> <p>16 CLERK: Brown?</p> <p>17 SEN. BROWN: Aye.</p> <p>18 CLERK: Clark?</p> <p>19 SEN. CLARK: No.</p> <p>20 CLERK: Harrington?</p> <p>21 SEN. HARRINGTON: Aye.</p> <p>22 CLERK: Hise?</p> <p>23 SEN. HISE: Aye.</p> <p>24 CLERK: Jackson?</p> <p>25 SEN. JACKSON: Aye.</p>

<p style="text-align: right;">94</p> <p>1 CLERK: Lee?</p> <p>2 SEN. LEE: Aye.</p> <p>3 CLERK: McKissick?</p> <p>4 SEN. MCKISSICK: Aye.</p> <p>5 CLERK: Randleman?</p> <p>6 SEN. RANDLEMAN: Aye.</p> <p>7 CLERK: Sanderson?</p> <p>8 SEN. SANDERSON: Aye.</p> <p>9 CLERK: Smith?</p> <p>10 SEN. SMITH: No.</p> <p>11 CLERK: Smith-Ingram?</p> <p>12 SEN. SMITH-INGRAM: Aye.</p> <p>13 CLERK: Wells?</p> <p>14 SEN. WELLS: Aye.</p> <p>15 SEN. RUCHO: Members of the committee,</p> <p>16 the roll was taken. We have the ayes, 27, the</p> <p>17 noes, 7. That was adopted. Okay, everyone, pay</p> <p>18 close attention here. We have before us another</p> <p>19 criteria entitled "Incumbency." Ms. Churchill?</p> <p>20 MS. CHURCHILL: "Incumbency: Candidates</p> <p>21 for Congress are not required by law to reside in a</p> <p>22 district they seek to represent; however,</p> <p>23 reasonable efforts shall be made to ensure that</p> <p>24 incumbent members of Congress are not paired with</p> <p>25 another incumbent in one of the new districts</p>	<p style="text-align: right;">96</p> <p>1 REP. JONES: Aye.</p> <p>2 CLERK: Brawley?</p> <p>3 REP. BRAWLEY: Aye.</p> <p>4 CLERK: Cotham?</p> <p>5 (No response.)</p> <p>6 CLERK: Davis?</p> <p>7 (No response.)</p> <p>8 CLERK: Farmer-Butterfield?</p> <p>9 REP. FARMER-BUTTERFIELD: Yes.</p> <p>10 CLERK: Hager?</p> <p>11 REP. HAGER: Aye.</p> <p>12 CLERK: Hanes?</p> <p>13 REP. HANES: Aye.</p> <p>14 CLERK: Hardister?</p> <p>15 REP. HARDISTER: Aye.</p> <p>16 CLERK: Hurley?</p> <p>17 REP. HURLEY: Aye.</p> <p>18 CLERK: Jackson?</p> <p>19 REP. JACKSON: Aye.</p> <p>20 CLERK: Johnson?</p> <p>21 REP. JOHNSON: Aye.</p> <p>22 CLERK: Jordan?</p> <p>23 REP. JORDAN: Aye.</p> <p>24 CLERK: McGrady?</p> <p>25 REP. MCGRADY: Aye.</p>
<p style="text-align: right;">95</p> <p>1 constructed in the 2016 contingent Congressional</p> <p>2 plan."</p> <p>3 REP. LEWIS: Mr. Chairman, I'd call this</p> <p>4 the Senator Smith criteria, and I'd move its</p> <p>5 adoption.</p> <p>6 SEN. RUCHO: All right. That was the</p> <p>7 explanation?</p> <p>8 REP. LEWIS: Well, this is also</p> <p>9 aspirational, and attempting to harmonize the other</p> <p>10 criteria.</p> <p>11 SEN. RUCHO: All right. Members of the</p> <p>12 committee, any questions or comments on the</p> <p>13 criteria before you dealing with incumbency?</p> <p>14 (No response.)</p> <p>15 SEN. RUCHO: Seeing none, Representative</p> <p>16 Lewis has a motion that we -- that we approve --</p> <p>17 adopt the incumbency criteria. Representative</p> <p>18 Brawley seconded. We have before us -- any</p> <p>19 additional thoughts or questions?</p> <p>20 (No response.)</p> <p>21 SEN. RUCHO: If not, we'll take a roll.</p> <p>22 Mr. Clerk?</p> <p>23 CLERK: Lewis?</p> <p>24 REP. LEWIS: Aye.</p> <p>25 CLERK: Jones?</p>	<p style="text-align: right;">97</p> <p>1 CLERK: Michaux?</p> <p>2 REP. MICHAUX: Aye.</p> <p>3 CLERK: Moore?</p> <p>4 REP. MOORE: Aye.</p> <p>5 CLERK: Stam?</p> <p>6 REP. STAM: Aye.</p> <p>7 CLERK: Stevens?</p> <p>8 REP. STEVENS: Aye.</p> <p>9 CLERK: Rucho?</p> <p>10 SEN. RUCHO: Aye.</p> <p>11 CLERK: Apodaca?</p> <p>12 SEN. APODACA: Aye.</p> <p>13 CLERK: Barefoot?</p> <p>14 SEN. BAREFOOT: Aye.</p> <p>15 CLERK: Blue?</p> <p>16 SEN. BLUE: Aye.</p> <p>17 CLERK: Brown?</p> <p>18 SEN. BROWN: Aye.</p> <p>19 CLERK: Clark?</p> <p>20 SEN. CLARK: No.</p> <p>21 CLERK: Harrington?</p> <p>22 SEN. HARRINGTON: Aye.</p> <p>23 CLERK: Hise?</p> <p>24 SEN. HISE: Aye.</p> <p>25 CLERK: Jackson?</p>

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<p>1 SEN. JACKSON: Aye. 2 CLERK: Lee? 3 SEN. LEE: Aye. 4 CLERK: McKissick? 5 SEN. MCKISSICK: Aye. 6 CLERK: Randleman? 7 SEN. RANDLEMAN: Aye. 8 CLERK: Sanderson? 9 SEN. SANDERSON: Aye. 10 CLERK: Smith? 11 SEN. SMITH: Aye. 12 CLERK: Smith-Ingram? 13 SEN. SMITH-INGRAM: Aye. 14 CLERK: Wells? 15 SEN. WELLS: Aye. 16 SEN. RUCHO: All right. 17 REP. MICHAUX: Mr. Chairman? 18 SEN. RUCHO: One second. Let me call the 19 vote, please. We had aye, 31, no, 1. That 20 criteria for incumbency has been adopted. All 21 right. Question, Senator -- Representative 22 McKissick -- I mean, excuse me -- sorry. Mr. 23 Michaux, did you have a question? 24 REP. MICHAUX: No. 25 SEN. RUCHO: Okay. I thought I heard</p>	<p>1 amendments, so a couple of minutes to break. 2 (RECESS, 12:04 - 12:22 P.M.) 3 SEN. RUCHO: All right, members of the 4 committee, I think you have on each of your desks a 5 copy of an amendment submitted by Representative 6 Paul Stam, "Amendment to Political Data Criteria 7 #3." Representative Stam? 8 REP. STAM: Yes. It's just sort of 9 technical. I kept reading that thing, and the way 10 it read, you could read it that you couldn't 11 consider data from the 2008 election, since it said 12 "since 2008," so this makes clear that yes, you can 13 consider 2008 and things forward. 14 SEN. RUCHO: All right. You've explained 15 it. Is that a motion you're making? 16 REP. STAM: I move the amendment. 17 SEN. RUCHO: Representative Lewis? 18 REP. LEWIS: Mr. Chairman, if I could, to 19 the maker of the amendment, Representative Stam, 20 would the gentleman consider striking "#3" to make 21 clear that these are in no particular order? In 22 other words, it would say, "Amendment to Political 23 Data Criteria." 24 REP. STAM: Oh, sure. Well, it would 25 be -- yes, yes, I do. Whether it's spelled</p>
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<p>1 something from over there. 2 REP. LEWIS: Thank you, Mr. Chairman, 3 members. 4 SEN. RUCHO: Okay, let me see. All 5 right. We -- I mentioned earlier that -- 6 amendments being submitted. Are there any 7 amendments that are going to be submitted? All 8 right. Representative Blue? 9 SEN. BLUE: I have one that -- 10 SEN. RUCHO: Excuse me, Senator Blue. 11 I'm sorry. 12 SEN. BLUE: I have one. I had to change 13 it after the adoption of one of the other 14 amendments. I had given it to Erika earlier. 15 SEN. RUCHO: All right. It's being 16 worked on? 17 SEN. BLUE: Yeah. 18 SEN. RUCHO: Okay. I think Senator Hise 19 has an amendment. Okay. Senator Hise, do you have 20 an amendment? 21 SEN. HISE: I have a motion. 22 SEN. RUCHO: Motion. One second. They 23 need to have copies for distribution. (Pause.) 24 I'd like to have the committee stand at ease for a 25 few moments while we have some copies made of the</p>	<p>1 "criterion" or "criteria," I will. 2 SEN. RUCHO: All right. So therefore, 3 the amendment that you've having strikes out -- or 4 it just says "Amendment to Political Data," and 5 then you're striking out -- excuse me -- "Political 6 Data Criteria." You're striking out "#3"? 7 REP. STAM: We're striking out "#3." 8 SEN. RUCHO: Just "#3." Members of the 9 committee, is that clear? 10 REP. LEWIS: Mr. Chairman? 11 SEN. RUCHO: Who's calling me? Oh, 12 Representative Lewis? 13 REP. LEWIS: I would support the 14 gentleman's amendment. 15 SEN. RUCHO: All right. Representative 16 Stam has submitted an amendment before you, and 17 it's open for discussion. Members of the 18 committee? 19 (No response.) 20 SEN. RUCHO: Seeing none, would you have 21 a roll call, Mr. Clerk? 22 CLERK: Lewis? 23 REP. LEWIS: Aye. 24 CLERK: Lewis, aye. Jones? 25 REP. JONES: Aye.</p>

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<p>1 CLERK: Jones, aye. Brawley? 2 REP. BRAWLEY: Aye. 3 CLERK: Brawley, aye. Cotham? 4 REP. COTHAM: Aye. 5 CLERK: Cotham, aye. Davis? 6 REP. DAVIS: Aye. 7 CLERK: Davis, aye. Farmer-Butterfield? 8 REP. FARMER-BUTTERFIELD: Aye. 9 CLERK: Farmer-Butterfield, aye. Hager? 10 REP. HAGER: Aye. 11 CLERK: Hager, aye. Hanes? 12 REP. HANES: Aye. 13 CLERK: Hanes, aye. Hardister? 14 REP. HARDISTER: Aye. 15 CLERK: Hardister, aye. Hurley? 16 REP. HURLEY: Aye. 17 CLERK: Hurley, aye. Jackson? 18 REP. JACKSON: Aye. 19 CLERK: Jackson, aye. Johnson? 20 REP. JOHNSON: Aye. 21 CLERK: Johnson, aye. Jordan? 22 REP. JORDAN: Aye. 23 CLERK: Jordan, aye. McGrady? 24 REP. MCGRADY: Aye. 25 CLERK: McGrady, aye. Michaux?</p>	<p>1 CLERK: Jackson, aye. Lee? 2 SEN. LEE: Aye. 3 CLERK: Lee, aye. McKissick? 4 SEN. MCKISSICK: No. 5 CLERK: McKissick, no. Randleman? 6 SEN. RANDLEMAN: Aye. 7 CLERK: Randleman, aye. Sanderson? 8 SEN. SANDERSON: Aye. 9 CLERK: Sanderson, aye. Smith? 10 SEN. SMITH: No. 11 CLERK: Smith, no. Smith-Ingram? 12 SEN. SMITH-INGRAM: Nay. 13 CLERK: Smith-Ingram, no. Wells? 14 SEN. WELLS: Aye. 15 CLERK: Aye. 4. 16 SEN. RUCHO: That makes 30 yeses. Did 17 everybody vote? 18 CLERK: Yes. 30 to 4. 19 SEN. RUCHO: All right, members of the 20 committee, on the roll-call vote on Representative 21 Stam's amendment dealing with -- and it's titled 22 "Amendment to Political Data Criteria." It is 23 adopted 30 to 4. 24 Okay, we'll now just -- we'll go on to 25 the next. (Pause.) All right, members, you have</p>
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<p>1 REP. MICHAUX: Aye. 2 CLERK: Michaux, aye. Moore? 3 REP. MOORE: Aye. 4 CLERK: Moore, aye. Stam? 5 REP. STAM: Aye. 6 CLERK: Stam, aye. Stevens? 7 REP. STEVENS: Aye. 8 CLERK: Stevens, aye. Rucho? 9 SEN. RUCHO: Aye. 10 CLERK: Rucho, aye. Apodaca? 11 SEN. APODACA: Aye. 12 CLERK: Apodaca, aye. Barefoot? 13 SEN. BAREFOOT: Aye. 14 CLERK: Barefoot, aye. Blue? 15 SEN. BLUE: No. 16 CLERK: Blue, no. Brown? 17 SEN. BROWN: Aye. 18 CLERK: Brown, aye. Clark? 19 SEN. CLARK: No. 20 CLERK: Clark, no. Harrington? 21 SEN. HARRINGTON: Aye. 22 CLERK: Harrington, aye. Hise? 23 SEN. HISE: Aye. 24 CLERK: Hise, aye. Jackson? 25 SEN. JACKSON: Aye.</p>	<p>1 an amendment coming out toward you, and it is 2 "Amendment, Compactness Criteria." It's -- all 3 right. 4 REP. LEWIS: Mr. Chairman? 5 SEN. RUCHO: Yes, sir, Representative 6 Lewis? Excuse me, Representative Lewis. I've 7 got -- we need to have Senator Blue explain his 8 amendment. Go ahead. 9 REP. LEWIS: I was wondering if Senator 10 Blue would agree to a -- to a technical fix to 11 strike the number sign and the 6. 12 SEN. BLUE: I would. 13 SEN. RUCHO: Okay. Members of the 14 committee, on Senator Blue's amendment, the title 15 will be, "Amendment, Compactness Criteria." You 16 will scratch "#6." That will not be in there. 17 All right, Senator Blue, everyone has a 18 copy of the amendment. Would you like to explain 19 your amendment? 20 SEN. BLUE: I would. Thank you, Mr. 21 Chairman. Mr. Chairman and ladies and gentlemen of 22 the committee and Senators and House members 23 present, what I tried to do in this amendment is 24 simply recognize that the county is the most 25 important governmental unit following the state,</p>

<p style="text-align: right;">106</p> <p>1 because they're extensions of the state, and to set 2 forth clearly that we are -- we're only going to 3 divide counties when you're equalizing population, 4 although that's a federal requirement, too, and 5 when you're complying with federal law. 6 It's something you've got to do. You 7 might as well admit that we have to comply with 8 federal law. Federal law is supreme, and so this 9 says that we will split counties only when you're 10 trying to get down to zero deviation in population, 11 which we're going to try to do, I take it, and only 12 when you're complying with a federal law regarding 13 redistricting. All of the other reasons that have 14 been given would not be justification for splitting 15 counties, and I move the adoption of the amendment. 16 SEN. RUCHO: Representative Lewis? 17 REP. LEWIS: Thank you, Mr. Chairman, and 18 thank you, Senator Blue, for that explanation. Let 19 me be clear, ladies and gentlemen. We of course 20 are going to comply with federal law. We would not 21 be here were we not attempting to comply with the 22 federal decision issued by the courts. I would 23 submit that this amendment is not necessary, and 24 should not be adopted because we of course are 25 going -- as Senator Blue said, of course we're</p>	<p style="text-align: right;">108</p> <p>1 were looking at. I can't really look at all that I 2 want to. 3 SEN. RUCHO: Okay. You all set? Members 4 of the committee -- oh, excuse me. Senator Hise? 5 SEN. HISE: Thank you, Mr. Chairman, and 6 this may be for -- just trying to get clarity on 7 what this amendment would actually do. One of the 8 outcomes of the last maps is that all of the major 9 urban areas in the state were represented by two 10 Congressmen that was coming in, and something we 11 saw at least that was coming in. Would this 12 amendment prohibit that type of decision for those 13 districts so that -- as that would be a political 14 impact that was coming in that we could not make 15 sure that urban areas were represented by two 16 Congressmen? 17 SEN. RUCHO: Okay. Representative -- 18 excuse me. Senator Blue, would you please answer 19 that question? 20 SEN. BLUE: I'll be happy to answer that. 21 Certainly not. As I said, the only two counties 22 that absolutely would be guaranteed to be 23 represented by two Congresspeople would be 24 Mecklenburg and Wake, since each of them has a 25 population in excess of the 700-plus thousand</p>
<p style="text-align: right;">107</p> <p>1 going to comply with the federal law. 2 As we've already had a pretty lengthy 3 discussion, that consideration, the word 4 "consideration" of incumbency and political impact 5 may be considered. It's not required to be 6 considered, and I've already stated for the record 7 that equalizing population is the most important 8 reason that a county would be divided. I would 9 respectfully ask the members to vote against this 10 amendment. 11 SEN. RUCHO: I've got Representative 12 Stam. 13 REP. STAM: I would oppose the amendment, 14 and point out what may be obvious. Senator Blue as 15 the Minority Leader is going to be perfectly 16 entitled to submit his own plan, and nothing in 17 what we've written would prohibit him from striking 18 those two criteria from his maps. He doesn't need 19 this amendment to do what he wants to do. 20 SEN. RUCHO: Yes, Senator Blue? 21 SEN. BLUE: Just a comment. My cape 22 disappeared, and I'm not Superman anymore, so I 23 can't do a map in a day that takes into account all 24 of the stuff that we have as criteria. I was 25 thinking we were narrowing the things that we</p>	<p style="text-align: right;">109</p> <p>1 that's necessary to draw a Congressional district. 2 If you started drawing a district toward an urban 3 area, then you could split that urban area when you 4 got to it so that it's in two separate districts. 5 This would in no way prohibit having two 6 Congresspeople from whichever other urban areas 7 other than Wake and Mecklenburg, where you'd be 8 guaranteed at least two, where you could bring them 9 into one of the urban counties, but you couldn't 10 split it but one time, so you get -- you could get 11 two from Guilford, two from Cumberland, two from 12 Forsyth, two from any of the counties, including 13 the smallest, if you paired it with a much bigger 14 population. 15 SEN. RUCHO: Representative Lewis, 16 comment? 17 REP. LEWIS: No, sir. I would say I'm 18 sure that the answer Senator Blue gave is correct 19 to Senator Hise's question. I just again would not 20 support the amendment as it's drafted for the 21 reasons that I've already stated. 22 SEN. RUCHO: All right. Members of the 23 committee, you have an amendment before you from 24 Senator Blue, and the amendment is entitled 25 "Amendment, Compactness Criteria." Any additional</p>

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<p>1 questions, comments? 2 (No response.) 3 SEN. RUCHO: Seeing none, the roll call, 4 Mr. Clerk? 5 CLERK: Lewis? 6 REP. LEWIS: No. 7 CLERK: Lewis, no. Jones? 8 REP. JONES: No. 9 CLERK: Jones, no. Brawley? 10 REP. BRAWLEY: No. 11 CLERK: Brawley, no. Cotham? 12 REP. COTHAM: Yes. 13 CLERK: Cotham, yes. Davis? 14 REP. DAVIS: No. 15 CLERK: Davis, no. Farmer-Butterfield? 16 REP. FARMER-BUTTERFIELD: Yes. 17 CLERK: Farmer-Butterfield, yes. Hager? 18 REP. HAGER: No. 19 CLERK: Hager, no. Hanes? 20 REP. HANES: Yes. 21 CLERK: Hanes, yes. Hardister? 22 REP. HARDISTER: No. 23 CLERK: Hardister, no. Hurley? 24 REP. HURLEY: No. 25 CLERK: Hurley, no. Jackson?</p>	<p>1 CLERK: Brown, no. Clark? 2 SEN. CLARK: Aye. 3 CLERK: Clark, aye. Harrington? 4 SEN. HARRINGTON: No. 5 CLERK: Harrington, no. Hise? 6 SEN. HISE: No. 7 CLERK: Hise, no. Jackson? 8 SEN. JACKSON: No. 9 CLERK: Jackson, no. Lee? 10 SEN. LEE: No. 11 CLERK: Lee, no. McKissick? 12 SEN. MCKISSICK: Aye. 13 CLERK: McKissick, aye. Randleman? 14 SEN. RANDLEMAN: No. 15 CLERK: Randleman, no. Sanderson? 16 SEN. SANDERSON: No. 17 CLERK: Sanderson, no. Smith? 18 SEN. SMITH: Aye. 19 CLERK: Smith, aye. Smith-Ingram? 20 SEN. SMITH-INGRAM: Aye. 21 CLERK: Smith-Ingram, aye. Wells? 22 SEN. WELLS: No. 23 CLERK: No. 24 SEN. RUCHO: All right, members of the 25 committee, the roll call vote was aye -- excuse</p>
111	113
<p>1 REP. JACKSON: Yes. 2 CLERK: Jackson, yes. Johnson? 3 REP. JOHNSON: No. 4 CLERK: Johnson, no. Jordan? 5 REP. JORDAN: No. 6 CLERK: Jordan, no. McGrady? 7 REP. MCGRADY: No. 8 CLERK: McGrady, no. Michaux? 9 REP. MICHAUX: Aye. 10 CLERK: Michaux, aye. Moore? 11 REP. MOORE: Aye. 12 CLERK: Moore, aye. Stam? 13 REP. STAM: No. 14 CLERK: Stam, no. Stevens? 15 REP. STEVENS: No. 16 CLERK: Stevens, no. Rucho? 17 SEN. RUCHO: No. 18 CLERK: Rucho, no. Apodaca? 19 SEN. APODACA: No. 20 CLERK: Apodaca, no. Barefoot? 21 SEN. BAREFOOT: No. 22 CLERK: Barefoot, no. Blue? 23 SEN. BLUE: Aye. 24 CLERK: Blue, aye. Brown? 25 SEN. BROWN: No.</p>	<p>1 me -- no, 23; aye, 11. 2 All right, we have another one before us, 3 and this one will be Senator Erica Smith-Ingram's 4 amendment on criteria. 5 REP. LEWIS: Mr. Chairman? 6 SEN. RUCHO: Yes, Representative Lewis? 7 REP. LEWIS: Would Senator Smith-Ingram 8 agree to a small technical amendment to strike the 9 number and "6"? 10 SEN. SMITH-INGRAM: Yes. 11 REP. LEWIS: Thank you, ma'am. 12 SEN. RUCHO: Members of the committee, 13 Senator Smith-Ingram has agreed to a technical 14 amendment that will strike the title, and the title 15 will read "Amendment to Compactness Criteria," and 16 that'll be all it'll say there. 17 Okay, I have Senator Smith-Ingram to 18 present her amendment. 19 SEN. SMITH-INGRAM: Thank you, Mr. Chair. 20 In light of our previous discussions and our effort 21 to promote harmony, you can have one-part harmony, 22 two-part, three-part. In this case, this will add 23 the four-part harmony, and I would ask staff if 24 there is needed discussion about the actual 25 language, it came from the federal case.</p>

<p style="text-align: right;">114</p> <p>1 REP. LEWIS: Mr. Chairman?</p> <p>2 SEN. RUCHO: Representative Lewis,</p> <p>3 comment?</p> <p>4 REP. LEWIS: Yes, sir. I appreciate the</p> <p>5 amendment and the sentiment expressed by the</p> <p>6 Senator. I would offer that it appears to me that</p> <p>7 the language that's attempting to be added is</p> <p>8 somewhat vague and nebulous, as I don't know that</p> <p>9 we have a defined -- or an actionable definition of</p> <p>10 what "community of interest" is, or "community of</p> <p>11 shared interest," so respectfully, I would ask the</p> <p>12 committee to defeat this amendment.</p> <p>13 SEN. RUCHO: Members of the committee,</p> <p>14 any questions or comments?</p> <p>15 (No response.)</p> <p>16 SEN. RUCHO: We have a motion before us</p> <p>17 dealing with "Amendment to Compact Criteria"</p> <p>18 submitted by Senator Erica Smith-Ingram. You have</p> <p>19 that before you. Seeing no comments or questions,</p> <p>20 Mr. Clerk, roll call, please?</p> <p>21 CLERK: Lewis?</p> <p>22 REP. LEWIS: No.</p> <p>23 CLERK: Lewis, no. Jones?</p> <p>24 REP. JONES: No.</p> <p>25 CLERK: Jones, no. Brawley?</p>	<p style="text-align: right;">116</p> <p>1 CLERK: Michaux, yes. Moore?</p> <p>2 REP. MOORE: Yea.</p> <p>3 CLERK: Moore, yea. Stam?</p> <p>4 REP. STAM: No.</p> <p>5 CLERK: Stam, no. Stevens?</p> <p>6 REP. STEVENS: Yes.</p> <p>7 CLERK: Stevens --</p> <p>8 REP. STEVENS: Sorry. No.</p> <p>9 CLERK: Stevens, no. Rucho?</p> <p>10 SEN. RUCHO: No.</p> <p>11 CLERK: Rucho, no. Apodaca?</p> <p>12 SEN. APODACA: No.</p> <p>13 CLERK: Apodaca, no. Barefoot?</p> <p>14 SEN. BAREFOOT: No.</p> <p>15 CLERK: Barefoot, no. Blue?</p> <p>16 SEN. BLUE: Yes.</p> <p>17 CLERK: Blue, yes. Brown?</p> <p>18 SEN. BROWN: No.</p> <p>19 CLERK: Brown, no. Clark?</p> <p>20 SEN. CLARK: Yes.</p> <p>21 CLERK: Clark, yes. Harrington?</p> <p>22 SEN. HARRINGTON: No.</p> <p>23 CLERK: Harrington, no. Hise?</p> <p>24 SEN. HISE: No.</p> <p>25 CLERK: Hise, no. Jackson?</p>
<p style="text-align: right;">115</p> <p>1 REP. BRAWLEY: No.</p> <p>2 CLERK: Brawley, no. Cotham?</p> <p>3 REP. COTHAM: Yes.</p> <p>4 CLERK: Cotham, yes. Davis?</p> <p>5 REP. DAVIS: No.</p> <p>6 CLERK: Davis, no. Farmer-Butterfield?</p> <p>7 REP. FARMER-BUTTERFIELD: Yes.</p> <p>8 CLERK: Farmer-Butterfield, yes. Hager?</p> <p>9 REP. HAGER: No.</p> <p>10 CLERK: Hager, no. Hanes?</p> <p>11 REP. HANES: Yes.</p> <p>12 CLERK: Hanes, yes. Hardister?</p> <p>13 REP. HARDISTER: No.</p> <p>14 CLERK: Hardister, no. Hurley?</p> <p>15 REP. HURLEY: No.</p> <p>16 CLERK: Hurley, no. Jackson?</p> <p>17 REP. JACKSON: Yes.</p> <p>18 CLERK: Jackson, yes. Johnson?</p> <p>19 REP. JOHNSON: No.</p> <p>20 CLERK: Johnson, no. Jordan?</p> <p>21 REP. JORDAN: No.</p> <p>22 CLERK: Jordan, no. McGrady?</p> <p>23 REP. MCGRADY: No.</p> <p>24 CLERK: McGrady, no. Michaux?</p> <p>25 REP. MICHAUX: Yes.</p>	<p style="text-align: right;">117</p> <p>1 SEN. JACKSON: No.</p> <p>2 CLERK: Jackson, no. Lee?</p> <p>3 SEN. LEE: No.</p> <p>4 CLERK: Lee, no. McKissick?</p> <p>5 SEN. MCKISSICK: Yes.</p> <p>6 CLERK: McKissick, yes. Randleman?</p> <p>7 SEN. RANDLEMAN: No.</p> <p>8 CLERK: Randleman, no. Sanderson?</p> <p>9 SEN. SANDERSON: No.</p> <p>10 CLERK: Sanderson, no. Smith?</p> <p>11 SEN. SMITH: Aye.</p> <p>12 CLERK: Smith, aye. Smith-Ingram?</p> <p>13 SEN. SMITH-INGRAM: Aye.</p> <p>14 CLERK: Smith-Ingram, aye. Wells?</p> <p>15 SEN. WELLS: No.</p> <p>16 CLERK: Wells, no. 23-11.</p> <p>17 SEN. RUCHO: 23 no; 11 yes?</p> <p>18 CLERK: Yes.</p> <p>19 SEN. RUCHO: Members of the committee, on</p> <p>20 "Amendment to Compactness Criteria" from Senator</p> <p>21 Erica Smith-Ingram, the ayes, 11; the noes, 23.</p> <p>22 That amendment was not adopted.</p> <p>23 All right, we have another one, and I</p> <p>24 believe it's already at your desk, and this one is</p> <p>25 "Communities of Interest," submitted by Senator</p>

<p style="text-align: right;">118</p> <p>1 Floyd McKissick. Senator McKissick, would you like 2 to explain your amendment? 3 SEN. MCKISSICK: Sure, and it's very 4 straightforward. It's not seeking to amend any 5 other criteria. This would just be a criteria that 6 is aspirational, as many of the others. It does 7 follow case law in terms of what is stated, and 8 what this says is that the committee will make 9 reasonable efforts to respect political 10 subdivisions, cities, towns, what have you, as well 11 as communities as defined by actual interest. What 12 I would like to do is recognize Kara as well as 13 Erica, perhaps, to provide further clarification in 14 terms of existing case law. 15 I think we are -- we would be remiss if 16 we did not include this as one of the benchmarks 17 that we would seek to use in drawing the plans as 18 we move forward. I can't imagine why we would want 19 to ignore communities of shared interest or not 20 respect political subdivisions other than counties. 21 This is talking about other political subdivisions 22 or towns that might be within these Congressional 23 districts, which should also be respected to the 24 extent it's possible and feasible to do so, not 25 just counties.</p>	<p style="text-align: right;">120</p> <p>1 on the vagueness of these terms, to reject this 2 additional criteria. 3 SEN. MCKISSICK: Follow-up, Mr. Chair? 4 SEN. RUCHO: Senator McKissick? 5 SEN. MCKISSICK: Let me ask you this, 6 Representative Lewis: I see you have some problems 7 with that terminology that was used by the US 8 Supreme Court, which I think is pretty clear in 9 terms of a directive, but what is the objection to 10 respecting political subdivisions, because I would 11 think that we would all want to do so for the 12 cities and towns and communities -- 13 SEN. RUCHO: Representative Lewis? 14 SEN. MCKISSICK: -- represent, and they 15 are used collectively by the Supreme Court, but I 16 mean, if you have problems with that, I think 17 you've got still to follow it, or you end up in 18 litigation. I don't think any of us want to end up 19 in litigation any more than we already are in this 20 state. I don't know why -- what's the objection to 21 respecting political subdivisions? 22 REP. LEWIS: Well, sir, to be clear, as I 23 pointed out when we adopted the compactness 24 criteria, it's not our intent to split -- we're 25 going to do the best we can to keep as many</p>
<p style="text-align: right;">119</p> <p>1 Kara, Erika, if you could comment, 2 please? 3 SEN. RUCHO: Please identify yourself and 4 respond to Senator McKissick's request if you can. 5 MS. MCCRAW: I'm Kara McCraw, staff 6 attorney with the Legislative Analysis Division. 7 Senator McKissick is referring to the last part of 8 this amendment. The term -- the language "respect 9 political subdivisions and communities defined by 10 actual shared interests" is language that was used 11 by the Supreme Court in the Miller v. Johnson case 12 from 1995 as part of the list of traditional race- 13 neutral districting principles. 14 SEN. RUCHO: All right. Representative 15 Lewis? 16 REP. LEWIS: Thank you, Mr. Chairman, and 17 thank you, Senator, for offering this additional 18 criteria. As best I can understand it, to the 19 extent it's required by federal law, of course 20 we're going to be mindful of that, but as you and I 21 had an aside conversation earlier, I don't believe 22 we have defined in this state at least what a 23 community of interest is. I don't understand, 24 actually, what "actual shared interests" means, so 25 therefore, I would have to ask the committee, based</p>	<p style="text-align: right;">121</p> <p>1 counties and as many VTDs whole. I'll give you a 2 direct example of why I think this is vague. 3 We've already heard from the gentleman 4 from Wake, Senator Blue, as he I think correctly 5 stated that a county is the most important 6 political subdivision. I actually -- I actually 7 agree with that. Your city, Durham, has annexed 8 into Wake County, so when I say it's vague and 9 nebulous, how do you know which -- which interest 10 you're going to follow? I think we've done a good 11 job in this committee of saying we're going to keep 12 as many counties and as many VTDs whole as we can. 13 SEN. RUCHO: Okay, I've got 14 Representative Stam. 15 REP. STAM: Yes, I was about to make the 16 same point. Cary has annexed into Chatham, so 17 under this, it would give mapmakers an excuse to 18 break the Wake/Chatham line so they could keep Cary 19 together. Angier, if you can believe it, has 20 annexed into Wake County. I don't know how David 21 Lewis let them do that. With this amendment, 22 mapmakers could despoil Wake County just to get a 23 few more Republicans into the Harnett County 24 district. 25 REP. LEWIS: Mr. Chairman?</p>

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<p>1 SEN. RUCHO: Representative Lewis?</p> <p>2 REP. LEWIS: For the record, while I do</p> <p>3 not support Senator McKissick's amendment, I think</p> <p>4 anywhere Angier can be shared is a positive thing.</p> <p>5 (Laughter.)</p> <p>6 SEN. RUCHO: Senator McKissick?</p> <p>7 SEN. MCKISSICK: I would simply say that</p> <p>8 we ought to try to respect these political</p> <p>9 subdivisions. I don't think with the current mood</p> <p>10 of this General Assembly, we have to worry about</p> <p>11 too many more annexations occurring for a while,</p> <p>12 so, you know, respecting political subdivisions is</p> <p>13 a valid criteria regardless of what those political</p> <p>14 subdivisions might look like, so obviously I</p> <p>15 support it, but I can certainly put my finger in</p> <p>16 the air and see the way these winds are blowing.</p> <p>17 SEN. RUCHO: Members of the committee,</p> <p>18 any additional questions? Senator?</p> <p>19 SEN. SMITH-INGRAM: Yes. Representative</p> <p>20 Lewis, I'm a little bit confused about your</p> <p>21 objection to the use of this language inasmuch as</p> <p>22 it relates to not having a definitive definition.</p> <p>23 Is it possible for staff to be able to comment on</p> <p>24 what is the definition used in North Carolina of</p> <p>25 "communities of interest" as we have applied it in</p>	<p>1 the citizens of Wake County? I don't think we've</p> <p>2 ever defined it. I certainly think that to the</p> <p>3 extent that it's not restricted from being used as</p> <p>4 the maps are prepared that, you know, I think</p> <p>5 that's something that the map drawers may wish to</p> <p>6 try and use, but I don't know that it -- I don't</p> <p>7 understand -- I don't understand it enough, and I</p> <p>8 do want to take this opportunity to respectfully</p> <p>9 let my friend from Durham know that, as I reminded</p> <p>10 him, I'm not an attorney, and in no way have I</p> <p>11 tried to disrespect or disregard any ruling from</p> <p>12 the US Supreme Court, nor from this federal trial</p> <p>13 court, but I'm not prepared to stand before this</p> <p>14 committee today and say that I understand what this</p> <p>15 is trying to do; therefore, I continue to oppose</p> <p>16 this new criteria.</p> <p>17 SEN. RUCHO: Members of the committee?</p> <p>18 (No response.)</p> <p>19 SEN. RUCHO: From the Chair,</p> <p>20 Representative Lewis, I recognize, and I think the</p> <p>21 committee recognizes the full effort to keep</p> <p>22 counties whole. I think the counties are</p> <p>23 relatively stable in their -- in their borders, but</p> <p>24 yet a municipality and a town and the like, with</p> <p>25 annexation, deannexation and the like, is more</p>
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<p>1 the past?</p> <p>2 SEN. RUCHO: The chair will allow that.</p> <p>3 Which staff member would like to define</p> <p>4 "communities of interest"?</p> <p>5 MS. MCCRAW: I'm Kara McCraw, staff</p> <p>6 attorney with the Legislative Analysis Division.</p> <p>7 North Carolina has not adopted a definition of</p> <p>8 "communities of interest."</p> <p>9 SEN. RUCHO: Follow-up?</p> <p>10 SEN. SMITH-INGRAM: Follow-up. As I</p> <p>11 recall, Representative Stevens just read from -- I</p> <p>12 believe she was citing case law, but it just seems</p> <p>13 that all the other elements that you have already</p> <p>14 in the criteria are there, with the exception of</p> <p>15 communities of interest, and so I'm just concerned</p> <p>16 about why you have adopted the other three, and why</p> <p>17 you feel comfortable with that, but not with the</p> <p>18 communities of interest.</p> <p>19 SEN. RUCHO: Representative Lewis?</p> <p>20 REP. LEWIS: Well, again, thank you for</p> <p>21 that inquiry, Senator. I would just say again that</p> <p>22 as we've never defined what a community of interest</p> <p>23 is -- and the example I tried to use with Senator</p> <p>24 McKissick, how do you define -- is the City of</p> <p>25 Durham a more important community of interest than</p>	<p>1 variable. Do you think that that may be one of the</p> <p>2 reasons for what could be adding confusion?</p> <p>3 REP. LEWIS: I think that's fair. I</p> <p>4 think that's a good indication of why I say this is</p> <p>5 vague, and not really defined. We got a request</p> <p>6 from a member for the central staff to explain how</p> <p>7 communities of interest are defined in the state,</p> <p>8 and they're not, so since there's not a definition,</p> <p>9 they shouldn't be in the criteria.</p> <p>10 SEN. RUCHO: Members of the committee,</p> <p>11 we've had discussion on this issue. We have an</p> <p>12 amendment before us, submitted by Senator Floyd</p> <p>13 McKissick dealing with communities of interest.</p> <p>14 Any additional questions, comments?</p> <p>15 (No response.)</p> <p>16 SEN. RUCHO: Seeing none, Mr. Clerk, a</p> <p>17 roll call, please?</p> <p>18 CLERK: Lewis?</p> <p>19 REP. LEWIS: No.</p> <p>20 CLERK: Lewis, no. Jones?</p> <p>21 REP. JONES: No.</p> <p>22 CLERK: Jones, no. Brawley?</p> <p>23 REP. BRAWLEY: No.</p> <p>24 CLERK: Brawley, no. Cotham?</p> <p>25 REP. COTHAM: Yes.</p>

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<p>1 CLERK: Cotham, yes. Davis? 2 REP. DAVIS: No. 3 CLERK: Davis, no. Farmer-Butterfield? 4 REP. FARMER-BUTTERFIELD: Yes. 5 CLERK: Farmer-Butterfield, yes. Hager? 6 REP. HAGER: No. 7 CLERK: Hager, no. Hanes? 8 REP. HANES: Yes. 9 CLERK: Hanes, yes. Hardister? 10 REP. HARDISTER: No. 11 CLERK: Hardister, no. Hurley? 12 REP. HURLEY: No. 13 CLERK: Hurley, no. Jackson? 14 REP. JACKSON: Yes. 15 CLERK: Jackson, yes. Johnson? 16 REP. JOHNSON: No. 17 CLERK: Johnson, no. Jordan? 18 REP. JORDAN: No. 19 CLERK: Jordan, no. McGrady? 20 REP. MCGRADY: No. 21 CLERK: McGrady, no. Michaux? 22 REP. MICHAUX: Aye. 23 CLERK: Michaux, aye. Moore? 24 REP. MOORE: Aye. 25 CLERK: Moore, aye. Stam?</p>	<p>1 CLERK: McKissick, aye. Randleman? 2 SEN. RANDLEMAN: No. 3 CLERK: Randleman, no. Sanderson? 4 SEN. SANDERSON: No. 5 CLERK: Sanderson, no. Smith? 6 SEN. SMITH: Aye. 7 CLERK: Smith, aye. Smith-Ingram? 8 SEN. SMITH-INGRAM: Aye. 9 CLERK: Smith-Ingram, aye. Wells? 10 SEN. WELLS: No. 11 CLERK: Wells, no. 12 SEN. RUCHO: Members of the committee, 13 the result of the vote on Senator McKissick's 14 amendment dealing with communities of interest, 15 aye, 11; no, 22. The motion is not adopted. 16 Members of the committee, any additional 17 amendments? Any motions? 18 REP. LEWIS: Mr. Chairman -- 19 SEN. RUCHO: Senator Hise? Oh, excuse 20 me. 21 REP. LEWIS: Mr. Chairman? 22 SEN. RUCHO: Yes, sir? 23 REP. LEWIS: I just wanted to thank the 24 members for their indulgence this morning, and I'm 25 proud of the 2016 contingent Congressional plan</p>
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<p>1 REP. STAM: No. 2 CLERK: Stam, no. Stevens? Stevens? 3 (No response.) 4 CLERK: Rucho? 5 SEN. RUCHO: No. 6 CLERK: Rucho, no. Apodaca? 7 SEN. APODACA: No. 8 CLERK: Apodaca, no. Barefoot? 9 SEN. BAREFOOT: No. 10 CLERK: Barefoot, no. Blue? 11 SEN. BLUE: Aye. 12 CLERK: Blue, aye. Brown? 13 SEN. BROWN: No. 14 CLERK: Brown, no. Clark? 15 SEN. CLARK: Aye. 16 CLERK: Clark, aye. Harrington? 17 SEN. HARRINGTON: No. 18 CLERK: Harrington, no. Hise? 19 SEN. HISE: No. 20 CLERK: Hise, no. Jackson? 21 SEN. JACKSON: No. 22 CLERK: Jackson, no. Lee? 23 SEN. LEE: No. 24 CLERK: Lee, no. McKissick? 25 SEN. MCKISSICK: Aye.</p>	<p>1 proposed criteria that we have adopted. I did want 2 to say for the record that it's my intent that 3 these be used in the drawing of the 2016 contingent 4 Congressional plan in response to the lawsuit only. 5 This is not an attempt to establish any other long- 6 running criteria. 7 SEN. RUCHO: Okay. Senator Hise, you 8 have a motion? 9 SEN. HISE: Mr. Chairman, I have a 10 motion, a written motion. 11 SEN. RUCHO: Okay. Has that been sent 12 out to each member? 13 SEN. HISE: Sergeant-at-Arms -- 14 SEN. RUCHO: Are the Sergeant-At Arms 15 distributing it? Let's take about a two- or three- 16 minute break so everybody can read this motion. 17 (Pause.) 18 Has everyone had an opportunity to review 19 Senator Hise's motion? Representative Jackson? 20 REP. JACKSON: Thank you, Mr. Chairman. 21 One question would be the way this is worded -- 22 SEN. RUCHO: Well, let me do this: if 23 it's dealing with what's in there, I'm going to 24 give Senator Hise a chance to explain it. I was 25 giving everybody a chance to review it.</p>

<p style="text-align: right;">130</p> <p>1 All right, everybody has it. Senator</p> <p>2 Hise, would you like to explain that motion, and</p> <p>3 then we'll open it up for discussion?</p> <p>4 SEN. HISE: Thank you, Mr. Chairman.</p> <p>5 Basically what this does is it consolidates the</p> <p>6 criteria we've already adopted and voted on into</p> <p>7 one piece, and then directs the co-chairs to go</p> <p>8 through the process of developing the maps on the</p> <p>9 basis of those criteria, and provides the sum of</p> <p>10 \$25,000 under the way we need to appropriate it,</p> <p>11 with approval of the speaker, and those type of</p> <p>12 things in the interim that are coming in, and then</p> <p>13 allows the minority party to have access to the</p> <p>14 same funds, and to draw maps under those criteria</p> <p>15 or any other criteria that they would establish.</p> <p>16 It also rescinds that provided that the Supreme</p> <p>17 Court issues a stay.</p> <p>18 SEN. RUCHO: Representative Lewis,</p> <p>19 comment?</p> <p>20 REP. LEWIS: Thank you, Mr. Chairman and</p> <p>21 members. Just to be clear where I hope we're going</p> <p>22 with this, as you know, we are still optimistic</p> <p>23 that we'll receive a stay from the Supreme Court.</p> <p>24 If we do not receive a stay, it would be the</p> <p>25 chairs' intent to bring a map before this committee</p>	<p style="text-align: right;">132</p> <p>1 REP. JACKSON: My question, I guess, was</p> <p>2 directed to you as chairman, or either Senator</p> <p>3 Hise. I was just wondering if we could change the</p> <p>4 first sentence of Paragraph 3. The way you've got</p> <p>5 it written is that the co-chairs, Lewis and Rucho,</p> <p>6 can pick their mapmakers, but our entire caucus</p> <p>7 would have to do it, the members of this committee,</p> <p>8 which means we'd have to stay together and vote and</p> <p>9 do things like that, and I would just ask that you</p> <p>10 consider substituting that, and as Minority Leader</p> <p>11 of the Senate, let Senator Blue make that choice</p> <p>12 for us, and our entire caucus not be involved and</p> <p>13 have to make that decision.</p> <p>14 SEN. RUCHO: Senator Hise, do you have a</p> <p>15 thought or a comment, or would you like to ponder</p> <p>16 that one a little bit?</p> <p>17 SEN. HISE: I don't see what's written as</p> <p>18 requiring that type of vote or operation from the</p> <p>19 minority caucus. This coming in would allow them</p> <p>20 to decide if they want to allow their leader to</p> <p>21 make that decision all on his own. I think that's</p> <p>22 within the way it's written here, so I don't</p> <p>23 necessarily see that issue in the way it's written,</p> <p>24 but however the minority -- the members of the</p> <p>25 minority part of this committee choose to select</p>
<p style="text-align: right;">131</p> <p>1 for recommendation for introduction to a special</p> <p>2 session that would be held later this week.</p> <p>3 The chairs would encourage in the</p> <p>4 issue -- in the -- for the goal of increased</p> <p>5 transparency that should other people have maps</p> <p>6 that they'd like this committee to consider, that</p> <p>7 they get them prepared and submitted as well, but</p> <p>8 to be clear, once the General Assembly convenes,</p> <p>9 there would also be an opportunity for maps to be</p> <p>10 presented to either the House or the Senate</p> <p>11 redistricting committees when they meet.</p> <p>12 However, the House rules, and I believe</p> <p>13 the Senate rules -- I won't speak for the Senate</p> <p>14 rules, but I know the House rules will require that</p> <p>15 any amendments that are offered to the plans that</p> <p>16 are submitted in fact be complete plans. In other</p> <p>17 words, you would have to have all 13 districts</p> <p>18 drawn to -- you would -- instead of trying to amend</p> <p>19 whatever plan that this committee will release, you</p> <p>20 would have to in essence prepare and release a plan</p> <p>21 to compete with this plan.</p> <p>22 SEN. RUCHO: All right. Members of the</p> <p>23 committee? Senator Blue? Oh, excuse me. Let me</p> <p>24 do this: Representative Jackson asked a question</p> <p>25 earlier. Go ahead, please.</p>	<p style="text-align: right;">133</p> <p>1 who the mapmaker is their concern.</p> <p>2 SEN. RUCHO: Okay. Senator Blue?</p> <p>3 SEN. BLUE: Two questions, basically,</p> <p>4 practical questions. I assume that the co-chairs</p> <p>5 have consulted with somebody who's available to be</p> <p>6 the consultant to draw a map. We haven't, but I</p> <p>7 can assure you that anybody that you consult with</p> <p>8 normally isn't going to do it, at least not for us,</p> <p>9 on a contingent fee basis, and we don't know when</p> <p>10 there may be an order one way or the other on this</p> <p>11 stay if the plaintiffs have until midafternoon to</p> <p>12 submit their papers. I don't know what the Chief</p> <p>13 Justice is going to do or when he's going to do it,</p> <p>14 but practically speaking, first, we haven't</p> <p>15 consulted with anybody, but secondly, if you</p> <p>16 consult with somebody, you've got to promise them</p> <p>17 you're going to pay them, and this says that you</p> <p>18 won't pay them even if they work two or three days</p> <p>19 if a stay is granted.</p> <p>20 SEN. RUCHO: All right. Representative</p> <p>21 Lewis?</p> <p>22 REP. LEWIS: Mr. Chairman and Senator</p> <p>23 Blue, if we need to have the attorney review this,</p> <p>24 we certainly can, and correct any offending</p> <p>25 language. I just wanted to state for the record</p>

<p style="text-align: right;">134</p> <p>1 that it is the intent, after having consulted with 2 the Speaker and the President Pro Tem, that any 3 mapmaker engaged would be paid. 4 I think -- well, I don't think. What the 5 language is trying to say is that should a stay be 6 issued, the maps would never be released, not that 7 the person would not be paid for their time. We're 8 not trying to get somebody to draw maps on a 9 contingency fee. We're having maps drawn 10 contingent upon us not getting a stay. 11 I would be glad, if you are concerned 12 about the way the language is written, to take a 13 moment and have that defined, but I did want to 14 state for the record that the intent would be any 15 map drawer that you would engage or the minority 16 party would engage would be paid for their time. 17 SEN. RUCHO: Senator Blue? 18 SEN. BLUE: Andrew has some language 19 that'll fix it. 20 SEN. RUCHO: All right. Senator Hise? 21 SEN. HISE: I think they may be -- I just 22 wanted to say I think they may be working on some 23 clarification, but the intent as drafted is that 24 work done while it's authorized to be done would be 25 paid for, but once the stay came out or a ruling</p>	<p style="text-align: right;">136</p> <p>1 MS. CHURCHILL: If there is a member of 2 the General Assembly that would like a map drawn, 3 we will do so at their direction; however, we will 4 need instruction from that member how to assign all 5 the geography of the state. 6 SEN. RUCHO: Does that answer your 7 question? 8 SEN. BLUE: You need instructions as to 9 how to sign -- assign what? 10 SEN. RUCHO: No, how to assign. 11 MS. CHURCHILL: How to assign the 12 geography of the state. 13 SEN. RUCHO: How you want the -- they can 14 draw the map. Just give them the direction on how 15 you want the -- the districts to be drawn. 16 SEN. BLUE: Okay. 17 SEN. RUCHO: Follow-up? 18 SEN. BLUE: Yeah, one follow-up. I'm 19 trying to keep up with the many iterations of the 20 case -- cases involving redistricting, and I think 21 that in that sense, even those instructions now are 22 considered confidential; is that correct? 23 MS. CHURCHILL: At this point in time, 24 any member of the General Assembly that makes a 25 drafting or information request to any legislative</p>
<p style="text-align: right;">135</p> <p>1 came out that we would stop work at that point, and 2 wouldn't be paid for work done after that point 3 that was coming in, but while the authorization 4 exists, we would pay for those funds, thinking we'd 5 get the check cut within 24 hours. 6 SEN. RUCHO: We'll stand at ease a moment 7 while we're studying some language, if we may. 8 While that's being looked at, Senator Blue, did you 9 have a second point that you were making? 10 SEN. BLUE: I did, as a matter of fact. 11 Do you have some experts hanging around who can do 12 this mapmaking that we might could talk to? We 13 haven't engaged anybody. 14 SEN. RUCHO: I think we're probably going 15 to use the one that you're presently using now. 16 SEN. BLUE: Which one is that one? 17 SEN. RUCHO: Whichever one that is. 18 SEN. BLUE: Is there capability within 19 the staff to do it, Mr. Chair? 20 SEN. RUCHO: I'm sorry. Say that again? 21 SEN. BLUE: Is there capability within 22 the staff to do mapmaking? 23 SEN. RUCHO: Ms. Churchill? Okay. Is 24 there capability within the staff of being able to 25 draw maps as requested by the minority party?</p>	<p style="text-align: right;">137</p> <p>1 employee, that drafting and information request is 2 treated as confidential, subjective to legislative 3 confidentiality by that legislative employee. Upon 4 enactment of any Congressional plan, the plans 5 themselves and the drafting and information 6 requests related to that plan do become a public 7 record. 8 SEN. RUCHO: Okay. Still working, so 9 just -- oh, excuse me. Senator McKissick? We're 10 working on the language, so -- 11 SEN. MCKISSICK: Sure. I understand. 12 This is a question to Erika to get further 13 clarification. In terms of the stat packs of data 14 that would be available, would we have the same 15 type of data that was available in 2011 as a basis 16 for drawing -- drawing plans? I mean, I know 17 there was some discussion today about not 18 considering race as a factor and, you know, things 19 of that sort, but would we still have available 20 data packs that are -- provide the statistics and 21 data that we would have used in 2011 were we 22 drawing those districts, and if so, is any of that 23 data updated at this time as well? 24 MS. CHURCHILL: Mr. Chair, as I 25 understand it -- and Mr. Frye will need to correct</p>

<p style="text-align: right;">138</p> <p>1 me, because he maintains our databases, but there</p> <p>2 have been no changes to the 2011 database. It</p> <p>3 still has the 2010 Census data in it. It still has</p> <p>4 the voter registration data in it. It still has</p> <p>5 the election data in it. We still have the</p> <p>6 capability of running exactly the same reports off</p> <p>7 of that database.</p> <p>8 SEN. MCKISSICK: Last follow-up.</p> <p>9 SEN. RUCHO: Follow-up.</p> <p>10 SEN. MCKISSICK: Yeah. Erika, I mean --</p> <p>11 and I know this is not a fair question, perhaps,</p> <p>12 but to what extent can we get reasonably quick</p> <p>13 turnaround, considering the time frame that we're</p> <p>14 in? I think our challenge is obviously we relied</p> <p>15 upon consultants and experts before, Mr. David</p> <p>16 Harris and Mr. Bill Gilkeson, but they are both</p> <p>17 attorneys engaged in private practice, handling</p> <p>18 clients, and to think that we can displace them</p> <p>19 this quickly to get them reengaged on less than 24</p> <p>20 hours notice is not a -- perhaps a reasonable</p> <p>21 expectation.</p> <p>22 I'm trying to see if we want to get these</p> <p>23 maps drawn, I think Senator Blue is on the right</p> <p>24 track. We're going to need to rely upon in-house</p> <p>25 resources, perhaps supplemented by consultants, but</p>	<p style="text-align: right;">140</p> <p>1 SEN. RUCHO: I think what you're -- what</p> <p>2 you reflect is what our concern is, that we have a</p> <p>3 short -- short window, and we're all faced with</p> <p>4 that same tight timeline, so -- but I'm sure staff,</p> <p>5 as Ms. Churchill said, will do its best to help you</p> <p>6 achieve your goal. Representative -- or Chairman</p> <p>7 Lewis?</p> <p>8 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>9 Senator McKissick, just to be clear, sir, the</p> <p>10 criteria that will be available to the mapmaker</p> <p>11 that Senator Rucho and I employ will only be the</p> <p>12 criteria that this -- that this committee has</p> <p>13 adopted. The stat packs, as you well recall,</p> <p>14 contain additional information. That information</p> <p>15 obviously will be available at the end of the map</p> <p>16 drawing process. Just to be clear, the map drawer</p> <p>17 that Senator Rucho and I will contract with will</p> <p>18 have only access to the criteria that this</p> <p>19 committee has adopted.</p> <p>20 SEN. MCKISSICK: Follow-up.</p> <p>21 SEN. RUCHO: Yes, sir. Follow-up.</p> <p>22 SEN. MCKISSICK: Some of the critical</p> <p>23 language in here under Bullet 3, if we go down</p> <p>24 about five lines, it talks about using the adopted</p> <p>25 criteria or any other criteria selected by the</p>
<p style="text-align: right;">139</p> <p>1 are we going to be able to get quick turnaround?</p> <p>2 MS. CHURCHILL: Mr. Chair, if I might, we</p> <p>3 will do our best. We do have a limited number of</p> <p>4 people who have the capa- -- the knowledge to</p> <p>5 actually use the mapping software, but amongst</p> <p>6 ourselves, once we know what the requests are, we</p> <p>7 will try to efficiently meet all of the needs.</p> <p>8 SEN. MCKISSICK: Thank you.</p> <p>9 SEN. RUCHO: All right. Senator</p> <p>10 McKissick, any specifics? I mean, you were talking</p> <p>11 about the stat packs and all that. Do you have any</p> <p>12 specific criteria that you want included in the</p> <p>13 stat pack?</p> <p>14 SEN. MCKISSICK: I mean, as long as we</p> <p>15 have the same type of stat pack that we had</p> <p>16 previously, the demographic data and the political</p> <p>17 data that's available, I think we'll probably be</p> <p>18 okay. I cannot think of any additional data that</p> <p>19 we would need. As long as that's readily</p> <p>20 accessible and we can get pretty quick</p> <p>21 turnaround -- I am deeply concerned that since we</p> <p>22 did not learn about the availability of the funds</p> <p>23 for consultants before today that trying to engage</p> <p>24 people who are deeply familiar with be challenging</p> <p>25 at this late point in time.</p>	<p style="text-align: right;">141</p> <p>1 minority caucus, so if we want to use other</p> <p>2 criteria that might be consistent with the ruling</p> <p>3 in Harris versus McCrory -- and we would contend</p> <p>4 that race can be used; it just cannot be the</p> <p>5 predominant factor. I just want to know that that</p> <p>6 data will be available if we need to use and rely</p> <p>7 upon it in drafting constitutionally correct</p> <p>8 districts, because that was not included in your</p> <p>9 criteria, but this language in this particular</p> <p>10 motion does give us as the minority caucus the</p> <p>11 right to use other criteria.</p> <p>12 SEN. RUCHO: Hold on. I'll try to get</p> <p>13 you an answer. (Pause.) Our understanding -- the</p> <p>14 Chairs' understanding is that, you know, in drawing</p> <p>15 maps, you can request any data you feel that needs</p> <p>16 to be there to help you achieve what you believe is</p> <p>17 a -- a map trying to resolve the issue dealing with</p> <p>18 the court decision.</p> <p>19 SEN. MCKISSICK: Thank you.</p> <p>20 SEN. RUCHO: Okay. Senator Blue?</p> <p>21 SEN. BLUE: Yes. So that I can follow</p> <p>22 that point up, it's my understanding, and correct</p> <p>23 me, that the -- that the database will have</p> <p>24 information about the 2012, 2014 elections in</p> <p>25 addition to the data that was available at the time</p>

<p style="text-align: right;">142</p> <p>1 the original maps were drawn. That is, they will</p> <p>2 be current in the information that they have. Is</p> <p>3 that right?</p> <p>4 SEN. RUCHO: Let's ask Mr. Frye if he'll</p> <p>5 be kind enough to explain what is in the database,</p> <p>6 and of course, it's based on the 2010 Census, but</p> <p>7 election results you're asking about.</p> <p>8 MR. FRYE: Yes. So -- so what I've got</p> <p>9 worked up for this round is there's -- you know, of</p> <p>10 course, you know, like we were talking about, all</p> <p>11 of the old data is totally in place if it makes</p> <p>12 sense to use that for whoever wants it, and for the</p> <p>13 2016 database, I've got total population, voting</p> <p>14 age population, because that's the only thing</p> <p>15 that's not -- just election data, right, and that</p> <p>16 is just election data. There's the 2008 general</p> <p>17 election, basically all the Council of State</p> <p>18 contests. There's the 2010 general election, US</p> <p>19 Senate, the 2012 general election, you know,</p> <p>20 basically governor and Council of State contests,</p> <p>21 and -- and then the 2014 US Senate.</p> <p>22 SEN. RUCHO: Does that help you?</p> <p>23 SEN. BLUE: You said 2014 US Senate.</p> <p>24 2014 Congressional data, elections data?</p> <p>25 SEN. RUCHO: Mr. Frye?</p>	<p style="text-align: right;">144</p> <p>1 SEN. BLUE: I'm just trying to make sure</p> <p>2 that whatever data is used by one is used and</p> <p>3 available by all.</p> <p>4 SEN. RUCHO: Well, my --</p> <p>5 SEN. BLUE: If we're basing it on the</p> <p>6 legislative computers and the legislative database.</p> <p>7 SEN. RUCHO: If I'm understanding it</p> <p>8 correctly, any data that you need to have is going</p> <p>9 to be available as long as you give some -- some</p> <p>10 request for it. Am I correct?</p> <p>11 MR. FRYE: Well, certainly --</p> <p>12 SEN. BLUE: Aspirational.</p> <p>13 MR. FRYE: Yeah. I'm concerned about</p> <p>14 timeline, you know, about preparing things, and</p> <p>15 certain things are prepared and ready to go, and</p> <p>16 yeah, those things can be --</p> <p>17 SEN. RUCHO: Ms. Churchill?</p> <p>18 MS. CHURCHILL: (Inaudible.)</p> <p>19 SEN. RUCHO: Talking about the data -- I</p> <p>20 think that was Mr. Frye's question. Okay, that's</p> <p>21 where we are. All right, still on -- did we get</p> <p>22 the language?</p> <p>23 REP. STAM: Yeah, on a big-picture issue</p> <p>24 here, while they're working out the language, I was</p> <p>25 minority leader during the Pender County</p>
<p style="text-align: right;">143</p> <p>1 MR. FRYE: Well, for the -- no, for the</p> <p>2 2014 database, it has just the US Senate.</p> <p>3 SEN. BLUE: I can't hear him.</p> <p>4 SEN. RUCHO: Could you repeat that again?</p> <p>5 We missed you with that.</p> <p>6 MR. FRYE: For the 2014 general election,</p> <p>7 I've just got US Senate. There are other --</p> <p>8 because there's sort -- there's a difference</p> <p>9 between like what data is -- has been generally</p> <p>10 processed and what data is sort of ready to go in</p> <p>11 our redistricting database. There's kind of a fair</p> <p>12 gap between those two things, so we do have some</p> <p>13 other information relating to other contests from</p> <p>14 2014, but --</p> <p>15 SEN. BLUE: So the database will not have</p> <p>16 the location of current incumbents or anything like</p> <p>17 that?</p> <p>18 SEN. RUCHO: Mr. Frye?</p> <p>19 MR. FRYE: What we have is locations of</p> <p>20 current incumbents that -- a lot of them were</p> <p>21 updated as of the 2011 cycle, so we may want to</p> <p>22 double-check. There are a few of them I was</p> <p>23 looking at that we may want to double-check on</p> <p>24 their addresses and see if they've moved.</p> <p>25 SEN. RUCHO: Senator Blue?</p>	<p style="text-align: right;">145</p> <p>1 redistricting. Speaker Hackney was the speaker.</p> <p>2 If I had been offered a deal like this, I would go</p> <p>3 give Representative Lewis and Senator Rucho a big</p> <p>4 bear hug and "Thank you."</p> <p>5 SEN. RUCHO: Don't hug us.</p> <p>6 SEN. BLUE: Certainly no kiss associated</p> <p>7 with it.</p> <p>8 (Laughter.)</p> <p>9 SEN. RUCHO: Representative -- or Senator</p> <p>10 Blue?</p> <p>11 SEN. BLUE: Yeah. I have a question of</p> <p>12 the Chair, but I guess you've got a motion pending,</p> <p>13 so I'll wait --</p> <p>14 SEN. RUCHO: We've got a motion.</p> <p>15 SEN. BLUE: -- until after the motion.</p> <p>16 SEN. RUCHO: Yeah, we've got a motion</p> <p>17 first. Senator Hise?</p> <p>18 SEN. HISE: Question, probably directed</p> <p>19 for staff. If -- and under this motion where it</p> <p>20 currently is, if the minority caucus is going to</p> <p>21 load additional information, including things like</p> <p>22 race and others, onto the stat pack for the</p> <p>23 operations, do we have a sufficient wall of</p> <p>24 separation, say separate computers, separate</p> <p>25 databases, separate operating, that the co-chairs</p>

<p style="text-align: right;">146</p> <p>1 do not have access to that information, or the</p> <p>2 other committees cannot have access to that</p> <p>3 information, because it's inconsistent with the</p> <p>4 criteria that's established, so can we make sure</p> <p>5 that once those are loaded, they are not available</p> <p>6 if they are not part of the criteria for the co-</p> <p>7 chairs' drawing?</p> <p>8 SEN. RUCHO: Mr. Frye?</p> <p>9 MR. FRYE: Yes. I believe for -- if the</p> <p>10 co-chairs are working on a plan, they can work on</p> <p>11 it and follow the criteria separately, and for any</p> <p>12 reports they produce, would just use that</p> <p>13 information.</p> <p>14 SEN. RUCHO: To follow up on what his</p> <p>15 question is, is there a clear wall that we have to</p> <p>16 actually request that information before it's</p> <p>17 eligible -- eligible for us to use? Am I correct?</p> <p>18 I mean, you're talking a firewall?</p> <p>19 SEN. HISE: Yeah, making sure that no</p> <p>20 one -- once it's loaded in, anyone could draw --</p> <p>21 could pull it up. I want to make sure that you</p> <p>22 don't have access to that information.</p> <p>23 MR. FRYE: Right. No, there is a</p> <p>24 firewall.</p> <p>25 SEN. RUCHO: Okay.</p>	<p style="text-align: right;">148</p> <p>1 SEN. MICHAUX: Okay.</p> <p>2 SEN. RUCHO: Okay. Are we close with the</p> <p>3 language?</p> <p>4 REP. LEWIS: Mr. Chairman?</p> <p>5 SEN. RUCHO: Yes, sir, Representative?</p> <p>6 REP. LEWIS: Could we deal with another</p> <p>7 matter while this is being perfected?</p> <p>8 SEN. RUCHO: Yes, sir. Let's just</p> <p>9 displace this amendment if we can, Senator Hise,</p> <p>10 while we're working on the language, and</p> <p>11 Representative Lewis has another issue he'd like to</p> <p>12 bring before -- before us.</p> <p>13 REP. LEWIS: Mr. Chairman, what I'd like</p> <p>14 to do is offer a motion that the committee directs</p> <p>15 the ISD to establish a computer and to populate the</p> <p>16 database of that computer with only the information</p> <p>17 that is consistent with the criteria adopted by the</p> <p>18 committee today, and to ensure that the firewalls</p> <p>19 that Mr. Frye spoke of are in place during the</p> <p>20 entire time that the map for this committee is</p> <p>21 drawn.</p> <p>22 SEN. RUCHO: We have a motion before us.</p> <p>23 Do we have a second on that, David?</p> <p>24 SEN. APODACA: Second.</p> <p>25 SEN. RUCHO: Second, Senator Apodaca.</p>
<p style="text-align: right;">147</p> <p>1 MR. FRYE: It is not a central server</p> <p>2 that would be --</p> <p>3 SEN. RUCHO: Are you okay, Senator Hise?</p> <p>4 Ms. Churchill, you okay?</p> <p>5 REP. LEWIS: Mr. Chairman?</p> <p>6 SEN. RUCHO: Where am I?</p> <p>7 REP. LEWIS: Mr. Chairman?</p> <p>8 SEN. RUCHO: Oh, excuse me.</p> <p>9 REP. LEWIS: I think perhaps we can --</p> <p>10 can summarize this by saying that all people will</p> <p>11 have access to all of the data. This committee has</p> <p>12 directed the chairs not to use some of it, so the</p> <p>13 computer on which this committee's map is drawn</p> <p>14 will only contain the criteria that was adopted by</p> <p>15 the committee, so to kind of get the gist of what</p> <p>16 Senator Blue was trying to ask, he can have access</p> <p>17 to more stuff than we can, not less.</p> <p>18 SEN. RUCHO: Okay. Representative --</p> <p>19 REP. MICHAUX: Yeah, I just wanted to be</p> <p>20 clear on this. It says that you-all must do your</p> <p>21 maps according to the criteria that this body has</p> <p>22 passed. It also says that our group can use any --</p> <p>23 this criteria or any other criteria we deem</p> <p>24 necessary. Is that correct?</p> <p>25 SEN. RUCHO: That's correct.</p>	<p style="text-align: right;">149</p> <p>1 Second. Representative Michaux?</p> <p>2 REP. MICHAUX: I was trying to get the</p> <p>3 gist of what he -- what his motion is.</p> <p>4 REP. LEWIS: May I speak on my motion?</p> <p>5 SEN. RUCHO: Yes, sir.</p> <p>6 REP. LEWIS: Members, the motion would</p> <p>7 direct ISD to establish a computer with the</p> <p>8 Maptitude software that has only the criteria as</p> <p>9 defined and authorized by this committee to use,</p> <p>10 and it is on that computer that the chairs would</p> <p>11 work, along with any consultant they would hire, to</p> <p>12 produce a map to return back to this committee for</p> <p>13 review.</p> <p>14 What it's doing in essence is limiting</p> <p>15 the chairs to only the criteria that this committee</p> <p>16 has adopted, while making sure that it does not</p> <p>17 limit the minority party to have access to whatever</p> <p>18 they deem important to be able to fully participate</p> <p>19 in this process.</p> <p>20 SEN. RUCHO: Follow-up?</p> <p>21 SEN. MICHAUX: Follow-up. What about the</p> <p>22 firewall separating the two on that?</p> <p>23 REP. LEWIS: Thank you for that -- that</p> <p>24 question, Representative Michaux. I was trying to</p> <p>25 use the same language that Mr. Frye. What I'm --</p>

<p style="text-align: right;">150</p> <p>1 to be absolutely clear, the only data the map 2 drawers on behalf of this committee can have is the 3 data that the criteria adopted by this committee 4 allows. There -- the firewall means that you won't 5 be able -- the map drawer won't have access to flip 6 a switch and say, "Well, I really do want to see 7 what the 2008 presidential race was." That will 8 not be loaded on the computer that he has access 9 to. 10 SEN. RUCHO: Okay. Senator McKissick? 11 SEN. MCKISSICK: Representative Lewis, 12 just to get some clarification here, if we as the 13 minority caucus want to look at the 2008 race, or 14 we want to look at other variables other than those 15 that were approved today, in the past, we had our 16 own computer available that also had Maptitude, or 17 whatever the appropriate program was at that time, 18 which we could utilize for crafting maps that 19 were -- met our criteria, so I'm just wanting to 20 determine if we will have a separate computer 21 available to us that we can use that will give us 22 the additional data that we might seek to use in 23 preparing maps. 24 REP. LEWIS: Senator -- 25 SEN. RUCHO: Representative Lewis?</p>	<p style="text-align: right;">152</p> <p>1 SEN. RUCHO: We'll get a copy of that. 2 All right. We have a motion before us from 3 Representative Lewis. It's been explained; it's 4 been debated. Any additional thoughts or questions 5 on that before we move to adopt his motion? 6 (No response.) 7 SEN. RUCHO: Seeing none, Mr. Clerk, if 8 you'd be kind enough to call roll? 9 CLERK: Lewis? 10 REP. LEWIS: Aye. 11 CLERK: Lewis, aye. Jones? 12 REP. JONES: Aye. 13 CLERK: Jones, aye. Brawley? 14 REP. BRAWLEY: Aye. 15 CLERK: Brawley, aye. Cotham? 16 REP. COTHAM: No. 17 CLERK: Cotham, no. Davis? 18 REP. DAVIS: Aye. 19 CLERK: Davis, aye. Farmer-Butterfield? 20 (No response.) 21 CLERK: Hager? 22 REP. HAGER: Aye. 23 CLERK: Hager, aye. Hanes? 24 REP. HANES: No. 25 CLERK: No? Hanes, no. Hardister?</p>
<p style="text-align: right;">151</p> <p>1 REP. LEWIS: Thank you, Mr. Chairman. 2 Senator McKissick and Mr. Chairman, if my motion is 3 adopted, I will offer the identical motion for the 4 minority party, except that they are able to 5 populate the data with whatever they want to 6 populate it with. 7 SEN. MCKISSICK: With that being said, I 8 could support this, but I want to make sure that 9 the minority party does have their own computer 10 populated with their own data, separate and apart 11 from the fields or subcategories which have been 12 identified as appropriate criteria today. 13 REP. LEWIS: Yes, sir, we're on the exact 14 same page on that point. 15 SEN. MCKISSICK: Thank you. 16 SEN. RUCHO: Okay. You -- any additional 17 questions on -- 18 REP. MICHAUX: Yeah. Can we get that in 19 writing? 20 (Laughter.) 21 REP. LEWIS: Mr. Chairman? 22 SEN. RUCHO: Yes, sir? 23 REP. LEWIS: We do have a court reporter, 24 so perhaps we could forward that to Representative 25 Michaux, and he could read it.</p>	<p style="text-align: right;">153</p> <p>1 REP. HARDISTER: Aye. 2 CLERK: Hardister, aye. Hurley? 3 REP. HURLEY: Aye. 4 CLERK: Hurley, aye. Jackson? 5 REP. JACKSON: No. 6 CLERK: Jackson, no. Johnson? 7 REP. JOHNSON: Aye. 8 CLERK: Johnson, aye. Jordan? 9 REP. JORDAN: Aye. 10 CLERK: Jordan, aye. McGrady? 11 REP. MCGRADY: Aye. 12 CLERK: McGrady, aye. Michaux? 13 REP. MICHAUX: No. 14 CLERK: Michaux, no. Moore? 15 REP. MOORE: Nay. 16 CLERK: Moore, nay. Stam? 17 REP. STAM: Aye. 18 CLERK: Stam, aye. Stevens? 19 (No response.) 20 CLERK: Rucho? 21 SEN. RUCHO: Aye. 22 CLERK: Rucho, aye. Apodaca? 23 SEN. APODACA: Aye. 24 CLERK: Apodaca, aye. Barefoot? 25 SEN. BAREFOOT: Aye.</p>

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<p>1 CLERK: Barefoot, aye. Blue? 2 SEN. BLUE: No. 3 CLERK: Blue, no. Brown? 4 SEN. BROWN: Aye. 5 CLERK: Brown, aye. Clark? 6 SEN. CLARK: No. 7 CLERK: Clark, no. Harrington? 8 SEN. HARRINGTON: Aye. 9 CLERK: Harrington, aye. Hise? 10 SEN. HISE: Aye. 11 CLERK: Hise, aye. Jackson? 12 SEN. JACKSON: Aye. 13 CLERK: Jackson, aye. Lee? 14 SEN. LEE: Aye. 15 CLERK: Lee, aye. McKissick? 16 SEN. MCKISSICK: No. 17 CLERK: McKissick, no. Randleman? 18 SEN. RANDLEMAN: Aye. 19 CLERK: Randleman, aye. Sanderson? 20 SEN. SANDERSON: Aye. 21 CLERK: Sanderson, aye. Smith? 22 SEN. SMITH: No. 23 CLERK: Smith, no. Smith-Ingram? 24 SEN. SMITH-INGRAM: Nay. 25 CLERK: Smith-Ingram, nay. Wells?</p>	<p>1 Representative Lewis, seconded by Senator 2 McKissick, was that -- for the minority party to 3 have access to the computer and have all the 4 information they deem necessary for them to 5 participate in trying to see what was requested as 6 a remedy for the three-judge panel's decision. Any 7 questions or comments? 8 REP. MICHAUX: Yeah. I want to know what 9 the last part of that motion was that he made. It 10 was sort of sub rosa. 11 SEN. RUCHO: Is that a question to 12 Representative Lewis? 13 REP. MICHAUX: Representative Lewis. 14 REP. LEWIS: Representative Michaux, what 15 I said was that the minority members -- the members 16 of the minority party on this committee may caucus 17 and elect a member or members to direct the drawing 18 of these maps on their behalf, and if they're 19 unable to do so, that the responsibility would be 20 vested in Senator Blue. 21 SEN. RUCHO: Do you have a follow-up 22 question? 23 REP. MICHAUX: We -- what I -- you are 24 vesting -- you're telling us what to do? Is that 25 what I'm hearing?</p>
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<p>1 SEN. WELLS: Aye. 2 CLERK: Wells, aye. 3 SEN. RUCHO: All right, members of the 4 committee, a motion by Representative Lewis 5 requiring and asking that the computer that will be 6 used by the majority party will only contain the 7 criteria that's been established and voted upon 8 today, and that vote was aye, 21, no, 11, so that 9 passed. 10 REP. LEWIS: Mr. Chairman? 11 SEN. RUCHO: Representative Lewis? 12 REP. LEWIS: For motion. 13 SEN. RUCHO: Motion. 14 REP. LEWIS: Mr. Chairman, I move that 15 the minority party be given access to a computer 16 and whatever information they deem necessary to 17 populate that computer in order to fully 18 participate in this pro- -- in this process. 19 Further, I move that the minority party members of 20 this committee may caucus and designate that 21 responsibility to one or more members, and if they 22 are not able to do that, that the responsibility 23 would fall to Senator Blue. 24 SEN. MCKISSICK: I'll second that. 25 SEN. RUCHO: All right. The motion by</p>	<p>1 REP. LEWIS: To repeat for the third 2 time, Representative Michaux, the minority party 3 members of this committee would caucus and 4 designate members or members to act on their 5 behalf, and if they are unable to do so, that that 6 responsibility would fall to Senator Blue. 7 REP. MICHAUX: Mr. Chairman? 8 SEN. RUCHO: Yes, sir? 9 REP. MICHAUX: Why don't you -- 10 SEN. RUCHO: Follow-up? 11 REP. MICHAUX: Yes. Why don't you let us 12 make that decision as to who it should fall -- fall 13 to? 14 REP. LEWIS: Mr. Chairman? 15 SEN. RUCHO: Yes, sir? 16 REP. LEWIS: Could we have maybe staff 17 clarify what it means that the minority party can 18 caucus and designate members or members, if that's 19 not allowing them to make a decision? Could 20 somebody explain exactly what language I'm not 21 communicating? 22 SEN. RUCHO: Okay. Senator Apodaca, you 23 had a comment? 24 SEN. APODACA: Mr. Chairman, inquiry of 25 the Chair.</p>

<p style="text-align: right;">158</p> <p>1 SEN. RUCHO: Yes, sir?</p> <p>2 SEN. APODACA: I'm somewhat confused. I</p> <p>3 thought Representative Jackson asked this question</p> <p>4 about how they could nominate somebody. I thought</p> <p>5 this is what we were trying to fix.</p> <p>6 SEN. RUCHO: All right. Then you're the</p> <p>7 one that's going to explain to -- to Senator --</p> <p>8 Representative Michaux. Okay? All right. A</p> <p>9 motion is before us. It's been seconded. Any</p> <p>10 additional questions or comments on Representative</p> <p>11 Lewis' motion?</p> <p>12 (No response.)</p> <p>13 SEN. RUCHO: Seeing none --</p> <p>14 CLERK: Lewis?</p> <p>15 SEN. RUCHO: -- Mr. Clerk, roll call,</p> <p>16 please?</p> <p>17 CLERK: Lewis?</p> <p>18 REP. LEWIS: Aye.</p> <p>19 CLERK: Lewis, aye. Jones?</p> <p>20 REP. JONES: Aye.</p> <p>21 CLERK: Jones, aye. Brawley?</p> <p>22 REP. BRAWLEY: Aye.</p> <p>23 CLERK: Brawley, aye. Cotham?</p> <p>24 REP. COTHAM: Aye.</p> <p>25 CLERK: Cotham, aye. Davis?</p>	<p style="text-align: right;">160</p> <p>1 CLERK: Moore, aye. Stam?</p> <p>2 REP. STAM: Aye.</p> <p>3 CLERK: Stam, aye. Stevens?</p> <p>4 (No response.)</p> <p>5 CLERK: Rucho?</p> <p>6 SEN. RUCHO: Aye.</p> <p>7 CLERK: Rucho, aye. Apodaca?</p> <p>8 SEN. APODACA: Aye.</p> <p>9 CLERK: Apodaca, aye. Barefoot?</p> <p>10 SEN. BAREFOOT: Aye.</p> <p>11 CLERK: Barefoot, aye. Blue?</p> <p>12 SEN. BLUE: Aye.</p> <p>13 CLERK: Blue, aye. Brown?</p> <p>14 SEN. BROWN: Aye.</p> <p>15 CLERK: Brown, aye. Clark?</p> <p>16 SEN. CLARK: Aye.</p> <p>17 CLERK: Clark, aye. Harrington?</p> <p>18 SEN. HARRINGTON: Aye.</p> <p>19 CLERK: Harrington, aye. Hise?</p> <p>20 SEN. HISE: Aye.</p> <p>21 CLERK: Hise, aye. Jackson?</p> <p>22 SEN. JACKSON: Aye.</p> <p>23 CLERK: Jackson, aye. Lee?</p> <p>24 SEN. LEE: Aye.</p> <p>25 CLERK: Lee, aye. McKissick?</p>
<p style="text-align: right;">159</p> <p>1 REP. DAVIS: Aye.</p> <p>2 CLERK: Davis, aye. Farmer-Butterfield?</p> <p>3 REP. FARMER-BUTTERFIELD: Aye.</p> <p>4 CLERK: Aye? Farmer-Butterfield, aye.</p> <p>5 Hager?</p> <p>6 SEN. RUCHO: Please speak loudly, folks.</p> <p>7 REP. HAGER: Aye.</p> <p>8 CLERK: Hager, aye. Hanes?</p> <p>9 REP. HANES: Aye</p> <p>10 CLERK: Hanes, aye. Hardister?</p> <p>11 REP. HARDISTER: Aye.</p> <p>12 CLERK: Hardister, aye. Hurley?</p> <p>13 REP. HURLEY: Aye.</p> <p>14 CLERK: Hurley, aye. Jackson?</p> <p>15 REP. JACKSON: Aye.</p> <p>16 CLERK: Jackson, aye. Johnson?</p> <p>17 REP. JOHNSON: Aye.</p> <p>18 CLERK: Johnson, aye. Jordan?</p> <p>19 REP. JORDAN: Aye.</p> <p>20 CLERK: Jordan, aye. McGrady?</p> <p>21 REP. MCGRADY: Aye.</p> <p>22 CLERK: McGrady, aye. Michaux?</p> <p>23 REP. MICHAUX: No.</p> <p>24 CLERK: Michaux, no. Moore?</p> <p>25 REP. MOORE: Aye.</p>	<p style="text-align: right;">161</p> <p>1 SEN. MCKISSICK: Aye.</p> <p>2 CLERK: McKissick, aye. Randleman?</p> <p>3 SEN. RANDLEMAN: Aye.</p> <p>4 CLERK: Randleman, aye. Sanderson?</p> <p>5 SEN. SANDERSON: Aye.</p> <p>6 CLERK: Sanderson, aye. Smith?</p> <p>7 SEN. SMITH: Aye.</p> <p>8 CLERK: Smith, aye. Smith-Ingram?</p> <p>9 SEN. SMITH-INGRAM: Aye.</p> <p>10 CLERK: Smith-Ingram, aye. Wells?</p> <p>11 SEN. WELLS: Aye.</p> <p>12 CLERK: Wells, aye.</p> <p>13 SEN. RUCHO: Members of the committee,</p> <p>14 after a roll-call vote, 32 aye and 1 no, so</p> <p>15 therefore, that has been settled. Senator Hise, do</p> <p>16 we have language?</p> <p>17 SEN. HISE: I think we have two</p> <p>18 amendments.</p> <p>19 SEN. RUCHO: Two amendments?</p> <p>20 SEN. HISE: Yeah.</p> <p>21 SEN. RUCHO: All right. Are you going to</p> <p>22 present it, or staff?</p> <p>23 SEN. HISE: I can present them. I think</p> <p>24 staff's going to read them. The first one is to</p> <p>25 clarify the payments made for work performed.</p>

<p style="text-align: right;">162</p> <p>1 SEN. RUCHO: Let's pay attention, here. 2 I know we're moving forward. Go ahead, please. 3 SEN. HISE: The first is to add some 4 clarification for the -- to allow payments for work 5 performed prior to the stay. 6 SEN. RUCHO: All right. First -- the 7 first amendment, Ms. Churchill, would you explain 8 what that amendment says and what it does? 9 MS. CHURCHILL: Yes, Mr. Chair. The 10 amendment would be to the end, to the last sentence 11 of Paragraph 2 and Paragraph 3 of Senator Hise's 12 motion. It would remove the period at the end of 13 that sentence, inset a semicolon, and all of the 14 following at the end of each sentence: "Provided, 15 however, this authorization shall permit 16 compensation to be paid for any work performed 17 prior to the issuance of such stay." 18 SEN. RUCHO: Members of the committee, 19 you have that before you. Is there any questions 20 on that first amendment that has been put forward 21 by Senator Hise on trying to provide some clarity 22 in what was brought up by Senator Blue? 23 Representative Jackson? 24 REP. JACKSON: Thank you, Mr. Chairman. 25 Would that -- that would amendment allow payment</p>	<p style="text-align: right;">164</p> <p>1 CLERK: Hager, yes. Hanes? 2 REP. HANES: Yes. 3 CLERK: Hanes, yes. Hardister? 4 REP. HARDISTER: Aye. 5 CLERK: Hardister, aye. Hurley? 6 REP. HURLEY: Aye. 7 CLERK: Hurley, aye. Jackson? 8 REP. JACKSON: Yes. 9 CLERK: Jackson, yes. Johnson? 10 REP. JOHNSON: Aye. 11 CLERK: Johnson, aye. Jordan? 12 REP. JORDAN: Aye. 13 CLERK: Jordan, aye. McGrady? 14 REP. MCGRADY: Aye. 15 CLERK: McGrady, aye. Michaux? 16 REP. MICHAUX: Aye. 17 CLERK: Michaux, aye. Moore? 18 REP. MOORE: Aye. 19 CLERK: Moore, aye. Stam? 20 REP. STAM: Aye. 21 CLERK: Stam, aye. Stevens? 22 (No response.) 23 CLERK: Rucho? 24 SEN. RUCHO: Aye. 25 CLERK: Rucho, aye. Apodaca?</p>
<p style="text-align: right;">163</p> <p>1 for services provided prior to the approval of 2 this? 3 SEN. RUCHO: No, sir, I don't believe so. 4 REP. JACKSON: Thank you. 5 SEN. RUCHO: Yeah. Questions? Any 6 additional? 7 (No response.) 8 SEN. RUCHO: All right, we have an 9 amendment before us that was read by staff, and we 10 will ask the Clerk to have a roll-call vote on 11 that, please. 12 CLERK: Lewis? 13 REP. LEWIS: Aye. 14 CLERK: Lewis, aye. Jones? 15 REP. JONES: Aye. 16 CLERK: Jones, aye. Brawley? 17 REP. BRAWLEY: Aye. 18 CLERK: Brawley, aye. Cotham? 19 REP. COTHAM: Aye. 20 CLERK: Cotham, aye. Davis? 21 REP. DAVIS: Yes. 22 CLERK: Davis, yes. Farmer-Butterfield? 23 REP. FARMER-BUTTERFIELD: Yes. 24 CLERK: Farmer-Butterfield, yes. Hager? 25 REP. HAGER: Yes.</p>	<p style="text-align: right;">165</p> <p>1 SEN. APODACA: Aye. 2 CLERK: Apodaca, aye. Barefoot? 3 SEN. BAREFOOT: Aye. 4 CLERK: Barefoot, aye. Blue? 5 SEN. BLUE: Aye. 6 CLERK: Blue, aye. Brown? 7 SEN. BROWN: Aye. 8 CLERK: Brown, aye. Clark? 9 SEN. CLARK: Aye. 10 CLERK: Clark, aye. Harrington? 11 SEN. HARRINGTON: Aye. 12 CLERK: Harrington, aye. Hise? 13 SEN. HISE: Aye. 14 CLERK: Hise, aye. Jackson? 15 SEN. JACKSON: Aye. 16 CLERK: Jackson, aye. Lee? 17 SEN. LEE: Aye. 18 CLERK: Lee, aye. McKissick? 19 SEN. MCKISSICK: Aye. 20 CLERK: McKissick, aye. Randleman? 21 SEN. RANDLEMAN: Aye. 22 CLERK: Randleman, aye. Sanderson? 23 SEN. SANDERSON: Aye. 24 CLERK: Sanderson, aye. Smith? 25 SEN. SMITH: Aye.</p>

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<p>1 CLERK: Smith, aye. Smith-Ingram?</p> <p>2 SEN. SMITH-INGRAM: Aye.</p> <p>3 CLERK: Smith-Ingram, aye. Wells?</p> <p>4 SEN. WELLS: Aye.</p> <p>5 CLERK: Wells, aye.</p> <p>6 SEN. RUCHO: Members of the committee,</p> <p>7 we -- okay. Members of the committee, Amendment 1,</p> <p>8 which was read by staff, was agreed upon</p> <p>9 unanimously, 33 to zero.</p> <p>10 Senator Hise, Amendment Number 2?</p> <p>11 SEN. HISE: Thank you, Mr. Chairman.</p> <p>12 This was with some further consultation with</p> <p>13 Senator Blue, and clarifies for a legislative</p> <p>14 confidentiality amendment when that applies, and</p> <p>15 applies to once it's submitted to this committee,</p> <p>16 and she has specific language they can read.</p> <p>17 SEN. RUCHO: Ms. Churchill, can you read</p> <p>18 the clarifying language there, please?</p> <p>19 MS. CHURCHILL: Yes, sir. In Paragraph</p> <p>20 2, this new sentence would be inserted at the --</p> <p>21 following the first sentence. "The co-chairs shall</p> <p>22 control legislative confidentiality of any drafting</p> <p>23 requests or maps produced from this authority</p> <p>24 unless and until presented to the committee in the</p> <p>25 co-chairs' discretion."</p>	<p>1 CLERK: Farmer-Butterfield, yes. Hager?</p> <p>2 REP. HAGER: Yes.</p> <p>3 CLERK: Hager, yes. Hanes?</p> <p>4 REP. HANES: Yes.</p> <p>5 CLERK: Hanes, yes. Hardister?</p> <p>6 REP. HARDISTER: Aye.</p> <p>7 CLERK: Hardister, aye. Hurley?</p> <p>8 REP. HURLEY: Aye.</p> <p>9 CLERK: Hurley, aye. Jackson?</p> <p>10 REP. JACKSON: Yes.</p> <p>11 CLERK: Jackson, yes. Johnson?</p> <p>12 REP. JOHNSON: Aye.</p> <p>13 CLERK: Johnson, aye. Jordan?</p> <p>14 REP. JORDAN: Aye.</p> <p>15 CLERK: Jordan, aye. McGrady?</p> <p>16 REP. MCGRADY: Aye.</p> <p>17 CLERK: McGrady, aye. Michaux?</p> <p>18 REP. MICHAUX: Yes.</p> <p>19 CLERK: Michaux, yes. Moore?</p> <p>20 REP. MOORE: Aye.</p> <p>21 CLERK: Moore, aye. Stam?</p> <p>22 REP. STAM: Aye.</p> <p>23 CLERK: Stam, aye. Rucho?</p> <p>24 SEN. RUCHO: Aye.</p> <p>25 CLERK: Rucho, aye. Apodaca?</p>
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<p>1 For Paragraph 3, this sentence would be</p> <p>2 inserted after -- following the first sentence:</p> <p>3 "The minority caucus' designee, Senator Blue, shall</p> <p>4 control legislative confidentiality of any drafting</p> <p>5 requests or maps produced from this authority</p> <p>6 unless and until presented to the committee in</p> <p>7 Senator Blue's discretion."</p> <p>8 SEN. RUCHO: Members of the committee,</p> <p>9 you have that before you. Any questions or</p> <p>10 comments?</p> <p>11 (No response.)</p> <p>12 SEN. RUCHO: Seeing -- seeing none, Mr.</p> <p>13 Clerk, would you do the roll call?</p> <p>14 CLERK: Lewis?</p> <p>15 REP. LEWIS: Aye.</p> <p>16 CLERK: Lewis, aye. Jones?</p> <p>17 REP. JONES: Aye.</p> <p>18 CLERK: Jones, aye. Brawley?</p> <p>19 REP. BRAWLEY: Aye.</p> <p>20 CLERK: Brawley, aye. Cotham?</p> <p>21 REP. COTHAM: Aye.</p> <p>22 CLERK: Cotham, aye. Davis?</p> <p>23 REP. DAVIS: Yes.</p> <p>24 CLERK: Davis, yes. Farmer-Butterfield?</p> <p>25 REP. FARMER-BUTTERFIELD: Yes.</p>	<p>1 SEN. APODACA: Aye.</p> <p>2 CLERK: Apodaca, aye. Barefoot?</p> <p>3 SEN. BAREFOOT: Aye.</p> <p>4 CLERK: Barefoot, aye. Blue?</p> <p>5 SEN. BLUE: Aye.</p> <p>6 CLERK: Blue, aye. Brown?</p> <p>7 SEN. BROWN: Aye.</p> <p>8 CLERK: Brown, aye. Clark?</p> <p>9 SEN. CLARK: Aye.</p> <p>10 CLERK: Clark, aye. Harrington?</p> <p>11 SEN. HARRINGTON: Aye.</p> <p>12 CLERK: Harrington, aye. Hise?</p> <p>13 SEN. HISE: Aye.</p> <p>14 CLERK: Hise, aye. Jackson?</p> <p>15 SEN. JACKSON: Aye.</p> <p>16 CLERK: Jackson, aye. Lee?</p> <p>17 SEN. LEE: Aye.</p> <p>18 CLERK: Lee, aye. McKissick?</p> <p>19 SEN. MCKISSICK: Aye.</p> <p>20 CLERK: McKissick, aye. Randleman?</p> <p>21 SEN. RANDLEMAN: Aye.</p> <p>22 CLERK: Randleman, aye. Sanderson?</p> <p>23 SEN. SANDERSON: Aye.</p> <p>24 CLERK: Sanderson, aye. Smith?</p> <p>25 SEN. SMITH: Aye.</p>

<p style="text-align: right;">170</p> <p>1 CLERK: Smith, aye. Smith-Ingram? 2 SEN. SMITH-INGRAM: Aye. 3 CLERK: Smith-Ingram, aye. Wells? 4 SEN. WELLS: Aye. 5 CLERK: Wells, aye. 6 SEN. RUCHO: Members of the committee, 7 the roll-call vote was 33 aye, zero nay. 8 Now, what you have before you is a motion 9 set forth by Senator Hise which has been amended, 10 and now it's before you for any further discussion 11 or questions, and if there are none, then we will 12 take a vote to adopt Senator Hise's motion. 13 Thoughts, questions? 14 (No response.) 15 SEN. RUCHO: Seeing none, Mr. Clerk, a 16 vote, please? 17 CLERK: Lewis? 18 REP. LEWIS: Aye. 19 CLERK: Lewis, aye. Jones? 20 REP. JONES: Aye. 21 CLERK: Jones, aye. Brawley? 22 REP. BRAWLEY: Aye. 23 CLERK: Brawley, aye. Cotham? 24 REP. COTHAM: No. 25 CLERK: Cotham, no. Davis?</p>	<p style="text-align: right;">172</p> <p>1 CLERK: Stam, aye. Rucho? 2 SEN. RUCHO: Aye. 3 CLERK: Rucho, aye. Apodaca? 4 SEN. APODACA: Aye. 5 CLERK: Apodaca, aye. Barefoot? 6 SEN. BAREFOOT: Aye. 7 CLERK: Barefoot, aye. Blue? 8 SEN. BLUE: No. 9 CLERK: Blue, no. Brown? 10 SEN. BROWN: Aye. 11 CLERK: Brown, aye. Clark? 12 SEN. CLARK: No 13 CLERK: Clark, no. Harrington? 14 SEN. HARRINGTON: Aye. 15 CLERK: Harrington, aye. Hise? 16 SEN. HISE: Aye. 17 CLERK: Hise, aye. Jackson? 18 SEN. JACKSON: Aye. 19 CLERK: Jackson, aye. Lee? 20 SEN. LEE: Aye. 21 CLERK: Lee, aye. McKissick? 22 SEN. MCKISSICK: No. 23 CLERK: McKissick, no. Randleman? 24 SEN. RANDLEMAN: Aye. 25 CLERK: Randleman, aye. Sanderson?</p>
<p style="text-align: right;">171</p> <p>1 REP. DAVIS: Yes. 2 CLERK: Davis, yes. Farmer-Butterfield? 3 REP. FARMER-BUTTERFIELD: No. 4 CLERK: Farmer-Butterfield, no. Hager? 5 REP. HAGER: Aye. 6 CLERK: Hager, aye. Hanes? 7 REP. HANES: No. 8 CLERK: Hanes, no. Hardister? 9 REP. HARDISTER: Aye. 10 CLERK: Hardister, aye. Hurley? 11 REP. HURLEY: Aye. 12 CLERK: Hurley, aye. Jackson? 13 REP. JACKSON: No. 14 CLERK: Jackson, no. Johnson? 15 REP. JOHNSON: Aye. 16 CLERK: Johnson, aye. Jordan? 17 REP. JORDAN: Aye. 18 CLERK: Jordan, aye. McGrady? 19 REP. MCGRADY: Aye. 20 CLERK: McGrady, aye. Michaux? 21 REP. MICHAUX: No. 22 CLERK: Michaux, no. Moore? 23 REP. MOORE: Nay. 24 CLERK: Moore, nay. Stam? 25 REP. STAM: Aye.</p>	<p style="text-align: right;">173</p> <p>1 SEN. SANDERSON: Aye. 2 CLERK: Sanderson, aye. Smith? 3 SEN. SMITH: No. 4 CLERK: Smith, no. Smith-Ingram? 5 SEN. SMITH-INGRAM: No. 6 CLERK: Smith-Ingram, no. Wells? 7 SEN. WELLS: Aye. 8 CLERK: Wells, aye. 9 SEN. RUCHO: Okay, members of the 10 committee, when that motion was up for adoption as 11 amended, we have 22 aye and 11 no. I believe that 12 we have concluded our business for today. 13 SEN. BLUE: Just a request, Mr. Chair. 14 SEN. RUCHO: Senator Blue? 15 SEN. BLUE: As I prepare to do this, 16 could you have the Clerk make available to me his 17 roll-call votes on these items, since it's all 18 official now? 19 SEN. RUCHO: That can be done. 20 SEN. BLUE: Thank you. 21 SEN. RUCHO: Okay. Senator Blue requests 22 that he gets a copy of the roll-call votes. Thank 23 you. 24 Before we finish up, let me just make it 25 clear. Now that we have criteria established, and</p>

<p style="text-align: right;">174</p> <p>1 understanding that there is access to computers and 2 the necessary resources to accomplish that, I'm 3 sure that the map drawers will do their job, come 4 forward with a map. We will possibly have a 5 meeting tomorrow. The chairs will allow you 6 notice. We're going to need to give the map 7 writers -- or drawers a chance to do their work. 8 We are also waiting for a decision by the Supreme 9 Court on the motion for stay to allow that election 10 to take place in an orderly manner, without any 11 voter dysfunction, so we will let you know at what 12 time tomorrow, or whether we will be meeting 13 tomorrow. 14 REP. STAM: Mr. Chair? 15 SEN. RUCHO: Sir? 16 REP. STAM: What is the earliest we would 17 be -- I mean, can we block out the morning for real 18 work, other work? 19 SEN. RUCHO: I think to give sufficient 20 time for map drawers to work, I think we would be 21 looking at -- the earliest would be 1:00. Okay? 22 Members of the committee, any questions on what was 23 discussed? 24 (No response.) 25 SEN. RUCHO: You all know what we've got,</p>	<p style="text-align: right;">176</p> <p>STATE OF NORTH CAROLINA COUNTY OF WAKE CERTIFICATE I, Carol M. Smith, a duly commissioned Notary Public in and for the State of North Carolina, do hereby certify that on February 16, 2016, this proceeding was held before me, this proceeding being reported by me verbatim and then reduced to typewritten form under my direct supervision; that the foregoing is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action. IN WITNESS WHEREOF, I have hereto set my hand, this the 29th day of February, 2016. _____ Notary Public Carol M. Smith Notary Number 19943320153</p>
<p style="text-align: right;">175</p> <p>1 so stay tuned, and thank you for your quick 2 response. Meeting adjourned. 3 (WHEREUPON, THE MEETING WAS CONCLUDED AT 1:43 P.M.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

Exhibit E

NORTH CAROLINA GENERAL ASSEMBLY
JOINT COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Wednesday, February 17, 2016
Reported by Jennifer C. Carroll, RMR, CRR

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

2	4
<p>1 (The proceedings were called to order at 2 4:08 p.m.) 3 CHAIRMAN RUCHO: Can we have the Select 4 Committee on Congressional Redistricting come to 5 order? Would everyone please take their seat. 6 We've got a few bits of housekeeping to take care 7 of prior to beginning the -- the map 8 presentations. Hopefully, we have a number of 9 different maps that will be available for folks to 10 take a look at. 11 And Senator Apodaca asked me if he was 12 going to be able to have dinner and be able to get 13 to the Carolina-Duke game. And I said we're going 14 to ask Senator Blue, Senator McKissick, and 15 Representative Michaux what -- if they think we've 16 got a shot at that. 17 SEN. MCKISSICK: I don't have any extra 18 tickets, I'm sorry. 19 SEN. APODACA: That's always his answer. 20 CHAIRMAN RUCHO: Okay. 21 SEN. MCKISSICK: It depends. 22 CHAIRMAN RUCHO: Okay. Well, we had a 23 very informative meeting yesterday. We were able 24 to get some criteria established, and so we're 25 going to go ahead and begin today with a -- well,</p>	<p>1 THE CLERK: Farmer-Butterfield? 2 REP. FARMER-BUTTERFIELD: Here. 3 THE CLERK: Hager? 4 REP. HAGER: Here. 5 THE CLERK: Hanes? 6 REP. HANES: Here. 7 THE CLERK: Hardister? 8 REP. HARDISTER: Here. 9 THE CLERK: Hurley? 10 REP. HURLEY: Here. 11 THE CLERK: Jackson? 12 REP. JACKSON: Here. 13 THE CLERK: Johnson? 14 REP. JOHNSON: Here. 15 THE CLERK: Jordan? 16 REP. JORDAN: Present. 17 THE CLERK: McGrady? 18 REP. McGRADY: Here. 19 THE CLERK: Michaux? 20 REP. MICHAUX: Here. 21 THE CLERK: Moore? 22 REP. MOORE: Present. 23 THE CLERK: Stam? 24 REP. STAM: Here. 25 THE CLERK: Stevens?</p>
3	5
<p>1 let me, first of all, introduce the 2 sergeants-at-arms who help us make this a -- a 3 successful and efficiently run meeting. From the 4 House sergeant-at-arms, I have Reggie Sills, 5 Marvin Lee, David Layton, Terry McGraw; and from 6 the Senate sergeant-at-arms, I have Dale Huff, Ed 7 Kessler, and Hal Roach. 8 Thanks very much for helping us. 9 Then the next item will be a roll call 10 for attendance. 11 And, Mr. Clerk, would you proceed with the 12 roll call. 13 And please say it loud enough so we know 14 you're here or not here. 15 THE CLERK: Okay. Starting with the 16 House: Lewis. 17 REP. LEWIS: Here. 18 THE CLERK: Jones? 19 REP. JONES: Here. 20 THE CLERK: Brawley? 21 REP. BRAWLEY: Here. 22 THE CLERK: Cotham? 23 REP. COTHAM: Here. 24 THE CLERK: Davis? 25 REP. DAVIS: Here.</p>	<p>1 REP. STEVENS: Here. 2 THE CLERK: Dixon? 3 REP. DIXON: Here. 4 CHAIRMAN RUCHO: Okay. 5 THE CLERK: Now, the Senate. 6 CHAIRMAN RUCHO: Senate. 7 THE CLERK: Rucho? 8 CHAIRMAN RUCHO: Here. 9 THE CLERK: Apodaca? 10 SEN. APODACA: Here. 11 THE CLERK: Barefoot? 12 SEN. BAREFOOT: Here. 13 THE CLERK: Blue? 14 SEN. BLUE: Here. 15 THE CLERK: Brown? 16 SEN. BROWN: Here. 17 THE CLERK: Clark? 18 SEN. CLARK: Present. 19 THE CLERK: Ford? 20 (No response.) 21 THE CLERK: Harrington? 22 SEN. HARRINGTON: Here. 23 THE CLERK: Hise? 24 SEN. HISE: Here. 25 THE CLERK: Jackson?</p>

<p style="text-align: right;">6</p> <p>1 SEN. JACKSON: Here.</p> <p>2 THE CLERK: Lee?</p> <p>3 SEN. LEE: Here.</p> <p>4 THE CLERK: McKissick?</p> <p>5 SEN. McKISSICK: Here.</p> <p>6 THE CLERK: Randleman?</p> <p>7 SEN. RANDLEMAN: Here.</p> <p>8 THE CLERK: Sanderson?</p> <p>9 SEN. SANDERSON: Here.</p> <p>10 THE CLERK: Smith?</p> <p>11 SEN. SMITH: Here.</p> <p>12 THE CLERK: Smith-Ingram?</p> <p>13 (No response.)</p> <p>14 THE CLERK: Wade?</p> <p>15 SEN. WADE: Here.</p> <p>16 THE CLERK: Wells?</p> <p>17 SEN. WELLS: Here.</p> <p>18 CHAIRMAN RUCHO: Okay. We are ready to</p> <p>19 begin our meeting. And again, there aren't very</p> <p>20 many opening remarks. We look forward to moving</p> <p>21 forward in an effort to comply with the</p> <p>22 three-judge panel's direction as to redrawing some</p> <p>23 Congressional district maps and the Congressional</p> <p>24 districts.</p> <p>25 Again, as you might expect, we still</p>	<p style="text-align: right;">8</p> <p>1 And Senator McKissick?</p> <p>2 SEN. McKISSICK: Not at this time.</p> <p>3 CHAIRMAN RUCHO: Okay. So let me ask:</p> <p>4 Are there any members of the committee that have</p> <p>5 maps that they would like to offer as far as</p> <p>6 having an opportunity to present them today so</p> <p>7 that their input can be taken by this committee?</p> <p>8 What we plan to do today is submit some</p> <p>9 maps -- or a map, take a look at it, debate it,</p> <p>10 approve it, so that the General Assembly can move</p> <p>11 forward when the special session is called, and we</p> <p>12 can go ahead and achieve what is the goal of</p> <p>13 complying with the federal court.</p> <p>14 Okay. That being said, then let's go</p> <p>15 ahead and -- Representative Blue -- excuse me,</p> <p>16 Representative Lewis, you'll be ready to explain</p> <p>17 the maps, and I think the sergeant-at-arms can</p> <p>18 probably start passing them out with the stat</p> <p>19 packs that were decided upon yesterday during the</p> <p>20 establishment of the criteria that -- upon which</p> <p>21 these maps were drawn.</p> <p>22 Say it again.</p> <p>23 MS. CHURCHILL: They have not arrived</p> <p>24 from the print shop yet. They are on their way.</p> <p>25 CHAIRMAN RUCHO: Okay. Let's wait a</p>
<p style="text-align: right;">7</p> <p>1 believe that the enacted maps are fair, legal, and</p> <p>2 constitutional that has -- as been validated by a</p> <p>3 number of North Carolina courts. But under that</p> <p>4 circumstance, we are following the direction of</p> <p>5 the three-judge panel from the Middle District,</p> <p>6 and so that's what we're going to do.</p> <p>7 The first part that I would like to</p> <p>8 request -- and -- and yesterday, if you remember</p> <p>9 correctly, we authorized \$25,000 for each,</p> <p>10 majority and minority, side to draw maps. And I</p> <p>11 will -- I will ask --</p> <p>12 (Cell phone ringing.)</p> <p>13 CHAIRMAN RUCHO: I don't ever do to that</p> <p>14 my wife. But I did.</p> <p>15 I will ask that -- we will first ask</p> <p>16 Senator Blue: Do you have any maps that you are</p> <p>17 planning to present today?</p> <p>18 SEN. BLUE: Not at present.</p> <p>19 CHAIRMAN RUCHO: Not at the present.</p> <p>20 Okay.</p> <p>21 Representative Jackson, I think you</p> <p>22 were --</p> <p>23 Representative Michaux, do you?</p> <p>24 REP. MICHAUX: Not yet.</p> <p>25 CHAIRMAN RUCHO: Not yet. Okay.</p>	<p style="text-align: right;">9</p> <p>1 little bit. They're on their way from the print</p> <p>2 shop as we speak. And so if we'll stay at ease</p> <p>3 for a few moments, and as soon as they come, then</p> <p>4 we will go ahead and distribute them out so that</p> <p>5 you'll have a chance to look at them. And so --</p> <p>6 Representative Lewis will explain the map. So</p> <p>7 stand at ease, please.</p> <p>8 (Proceedings are held at ease.)</p> <p>9 CHAIRMAN RUCHO: Members of the</p> <p>10 Committee, just for your knowledge, you'll be</p> <p>11 getting some hard copies now, and at the end of</p> <p>12 this meeting we will have them online with the</p> <p>13 same documentation that you will be receiving</p> <p>14 in -- upon arrival.</p> <p>15 SEN. APODACA: Mr. Chairman, housekeeping</p> <p>16 matter, if we could.</p> <p>17 CHAIRMAN RUCHO: Say that again.</p> <p>18 SEN. APODACA: A housekeeping matter, if</p> <p>19 we might.</p> <p>20 CHAIRMAN RUCHO: Housekeeping, yes.</p> <p>21 SEN. APODACA: Yes. When we call the</p> <p>22 roll, could we call the Upper Chamber first</p> <p>23 instead of the House? It seems like that would be</p> <p>24 more appropriate.</p> <p>25 REP. MICHAUX: I thought that was already</p>

<p style="text-align: right;">10</p> <p>1 being done.</p> <p>2 CHAIRMAN RUCHO: Senator Apodaca, I think</p> <p>3 you should have learned your lesson when</p> <p>4 Representative Michaux already called you a lame</p> <p>5 duck. So...</p> <p>6 But then again, that's the nicest thing</p> <p>7 that anybody has ever called Senator Apodaca.</p> <p>8 So...</p> <p>9 SEN. APODACA: In 14 years, that's the</p> <p>10 nicest thing.</p> <p>11 REP. MICHAUX: I called you one, too.</p> <p>12 CHAIRMAN RUCHO: I'm honored.</p> <p>13 Sergeant-at-arms, will you please let me</p> <p>14 know when the maps are passed out so we can move</p> <p>15 forward.</p> <p>16 Representative Lewis, before he makes his</p> <p>17 presentation, wants me to let you know that these</p> <p>18 are probably some of the most -- some of the best</p> <p>19 maps that's been out in 40 years. So...</p> <p>20 At least 40?</p> <p>21 REP. LEWIS: Four.</p> <p>22 CHAIRMAN RUCHO: Four?</p> <p>23 REP. LEWIS: Four.</p> <p>24 CHAIRMAN RUCHO: Okay.</p> <p>25 Sergeant-at-arms, are we all set?</p>	<p style="text-align: right;">12</p> <p>1 districts. Race was not considered and is not</p> <p>2 present on these reports.</p> <p>3 Partisan advantage: We believe this map</p> <p>4 will produce an opportunity to elect ten</p> <p>5 Republican members of Congress. But make no</p> <p>6 mistake, this is a weaker map than the enacted</p> <p>7 plan in that respect.</p> <p>8 The 12th District: This map does away</p> <p>9 with the serpentine 12th District that dates back</p> <p>10 to 1992.</p> <p>11 Compactness: Only 13 counties and 13</p> <p>12 VTDs were split in this map. Let me repeat that:</p> <p>13 Only 13 counties and 13 VTDs were split in this</p> <p>14 map. In accordance with the criteria, more whole</p> <p>15 counties and more whole precincts, or VTDs, are</p> <p>16 the best indicator of compactness we believe we</p> <p>17 are able to achieve.</p> <p>18 Incumbency: Only two incumbents are</p> <p>19 double-bunked in this map; one Republican and one</p> <p>20 Democrat. Eleven Republicans [sic] were placed in</p> <p>21 a district by themselves.</p> <p>22 Mr. Chairman?</p> <p>23 CHAIRMAN RUCHO: Yes, sir.</p> <p>24 REP. LEWIS: Anticipating some inquiries,</p> <p>25 I will suspend my presentation and take questions</p>
<p style="text-align: right;">11</p> <p>1 Does everyone in -- on the committee have</p> <p>2 a copy of the map and the statistics?</p> <p>3 All right. Then let's -- let's quiet</p> <p>4 down so we can get this done.</p> <p>5 Representative Lewis, would you be kind</p> <p>6 enough to present the maps for us?</p> <p>7 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>8 Members, good afternoon. Yesterday, this</p> <p>9 committee approved seven criteria for the 2016</p> <p>10 contingent Congressional redistricting, and a map</p> <p>11 was produced in accordance with that criteria.</p> <p>12 While I am happy to take questions from the</p> <p>13 committee, first I would like to take a moment to</p> <p>14 walk through the criteria and discuss how this map</p> <p>15 addresses each of the criteria.</p> <p>16 First, equal population: All these</p> <p>17 districts are drawn with either 7,000 -- pardon</p> <p>18 me. All these districts are drawn with either --</p> <p>19 with either 733,499 persons or 733,498 total</p> <p>20 persons. This is as equal -- this is as equal as</p> <p>21 practical and in accordance with federal law.</p> <p>22 Contiguity: All the areas in every</p> <p>23 district are comprised of contiguous territory.</p> <p>24 Political data: The stat report show</p> <p>25 which election results were used in building these</p>	<p style="text-align: right;">13</p> <p>1 at your direction.</p> <p>2 CHAIRMAN RUCHO: Okay. Members of the</p> <p>3 Committee, you have the proposed map before you.</p> <p>4 And again, I'll just remind you: This is the only</p> <p>5 one that will be reviewed today because we just --</p> <p>6 you know, there were no other maps submitted by</p> <p>7 either the minority House and/or Senate or any</p> <p>8 individual. So this is the map we're going to be</p> <p>9 discussing today. And after discussion is</p> <p>10 completed, this committee will take a vote, and</p> <p>11 we'll either be against or referring this to the</p> <p>12 General Assembly for its special session for</p> <p>13 adoption so we can comply with the three-judge</p> <p>14 panel from the Middle District.</p> <p>15 Members of the Committee.</p> <p>16 All right. Let's start off with Senator</p> <p>17 McKissick.</p> <p>18 SEN. McKISSICK: Thank you, Mr. Chair. I</p> <p>19 would like to be recognized for a series of</p> <p>20 questions, if that's possible.</p> <p>21 CHAIRMAN RUCHO: We'll go through the</p> <p>22 Chair.</p> <p>23 SEN. McKISSICK: Yes, absolutely.</p> <p>24 CHAIRMAN RUCHO: And we'll go one after</p> <p>25 another.</p>

<p style="text-align: right;">14</p> <p>1 SEN. McKISSICK: I was wondering if I 2 could first get some understanding of the 3 percentages of Democrats and Republicans in these 4 various districts. If we can have, perhaps, a 5 staff person review that with us. 6 CHAIRMAN RUCHO: So let me -- let me be 7 clear. Now, you want the -- 8 First of all, Representative Lewis, 9 that's not part of the stat pack, correct? 10 SEN. McKISSICK: We don't have a stat 11 pack. The only thing we have are -- 12 CHAIRMAN RUCHO: The election results. 13 All right. What would you request? 14 SEN. McKISSICK: Well, what I would like 15 to know is what the breakdown is in terms of 16 Democrat, Republican, and unaffiliated voters in 17 each of these particular districts, as a starting 18 point. It would also be helpful to understand -- 19 I know there was -- who exactly is double-bumped. 20 It would appear that Representative Adams, who 21 represented the 12th District -- 22 CHAIRMAN RUCHO: Well, hold it. Let's -- 23 let's get first -- that first part cleared up. 24 First of all, you requested -- 25 Senator McKissick requested that we get</p>	<p style="text-align: right;">16</p> <p>1 statistics that you have. 2 CHAIRMAN RUCHO: All right. 3 SEN. McKISSICK: Thank you. And I wanted 4 to follow up. 5 CHAIRMAN RUCHO: Follow-up question, yes, 6 sir. 7 SEN. McKISSICK: Precisely look at the 8 performance characteristics of each district in 9 terms of whether it's a Democratic performance 10 district, and if so, by what percentage, a 11 Republican performance district, so that we have 12 some idea the extent to which there are 13 competitive swing districts. 14 I know Representative Lewis has indicated 15 that the map may not be quite as favorable as it 16 was before to Republican majority. But to the 17 extent to which we could get data that 18 specifically breaks down the performance 19 characteristics of each of these Congressional 20 districts, that would be helpful. Then we can 21 understand what we're looking at. 22 REP. LEWIS: Mr. Chairman and Members? 23 CHAIRMAN RUCHO: Yes. Representative 24 Lewis. 25 REP. LEWIS: Members, if I could direct</p>
<p style="text-align: right;">15</p> <p>1 some information on party affiliation in each of 2 the districts. Is that something we can achieve, 3 either now or -- 4 MS. CHURCHILL: It is something we cannot 5 achieve while the committee is in meeting. 6 CHAIRMAN RUCHO: Right. Okay. Just 7 state that again, please, in the microphone. 8 MS. CHURCHILL: At this juncture we can't 9 achieve it while the committee is meeting. But we 10 can achieve that for Senator McKissick. 11 SEN. McKISSICK: Okay. And the 12 committee -- 13 REP. LEWIS: Mr. Chairman? 14 CHAIRMAN RUCHO: Yes, sir. 15 REP. LEWIS: Could I speak to that one 16 point? 17 CHAIRMAN RUCHO: Representative Lewis. 18 REP. LEWIS: Yes, sir. 19 Obviously, the staff can provide to the 20 gentleman whatever statistics he asked for. I did 21 want to say that the -- in the drawing of this 22 map, we looked at election results. We think 23 those are better indicators of voting performance 24 than voter registration, which is why you don't -- 25 which is why that's not shown in these -- in the</p>	<p style="text-align: right;">17</p> <p>1 your attention to the documents that you have 2 before you -- I probably should have done a better 3 job of going through that. 4 If you will, first of all, you should 5 have a document before you that's entitled "2016 6 Redistricting Database Field Key." It's an 8-1/2 7 by 11 sheet of -- two sheets of paper. 8 Does everyone see that or have access to 9 that document? 10 If you'll look at that document, it 11 will -- actually, if you'll look at the right-hand 12 column, the right-hand column of that document, 13 this is a computer code. This is the way the 14 computer generated the election results which we 15 looked at. 16 For instance, you'll see under "2008 17 General Election Attorney General," there's a code 18 there at the right-hand column. Again, I direct 19 your attention, EL08G_AG_D. You can take and find 20 that same code on the stat pack that was 21 distributed to you. And, in fact, it would be on 22 what I would consider page 2 of the stat pack. If 23 you'll look across the top -- I'm referring now to 24 the big -- to the big set of documents that you 25 have. You'll see it says, "Election Results 2008,</p>

<p style="text-align: right;">18</p> <p>1 general, AG, AD, CA." You should be able to go in 2 and find "EL08G_AG." 3 For example, the very first listed item 4 on this page I'm referring to, you'll see it says, 5 District 1 -- excuse me, it says "district," and 6 then beside it, "EL08G_AG_D." That would be the 7 results in District 1 for the candidate Roy Cooper 8 who was the Democratic nominee for the Attorney 9 General's office. 10 So to maybe make this easier, perhaps you 11 could write the word "Cooper" where it says 12 "EL08G_AG_D." And using these two documents, you 13 will be able to see what the election results are. 14 I believe it would be fair to say -- and, 15 Mr. Chairman, the staff can certainly correct 16 me -- that the -- as you look at the code, the 17 EL08G_AG, that, obviously, is Attorney General. 18 And then the "_D" would be Democrat. 19 So while the field key will explain 20 exactly who it is referring to, you can probably 21 get a good feeling for if it's comparing the 22 Democrat for that office or the Republican for 23 that office. 24 CHAIRMAN RUCHO: Okay. And just a 25 clarity, Senator McKissick, before you go on to</p>	<p style="text-align: right;">20</p> <p>1 CHAIRMAN RUCHO: Explain. 2 REP. LEWIS: Mr. Chairman, if I may. 3 CHAIRMAN RUCHO: Yes. Representative 4 Lewis, you have -- 5 REP. LEWIS: I just want to say that I 6 completely agree with Senator McKissick, that 7 would be a whole lot easier way to look at these 8 reports. I asked for that to be done. And it's 9 not the way, unfortunately, the system generates 10 the reports. But if you would indulge me for just 11 a moment, I'm going to get my notes and we'll go 12 sheet by sheet, and we'll add those names, if you 13 would be so kind. 14 SEN. McKISSICK: I would certainly 15 indulge you, without a doubt. I think that would 16 be a helpful exercise for all of us who are not 17 acquainted with this and haven't seen it before. 18 CHAIRMAN RUCHO: Representative Lewis, 19 would you -- 20 And, Members of the Committee, please take 21 note as Representative Lewis explains what each of 22 the AG, CI, and the like is, based on the year of 23 the election. 24 Okay. Representative Lewis, you have the 25 microphone.</p>
<p style="text-align: right;">19</p> <p>1 your next question -- and I think Representative 2 Lewis mentioned it -- that the criteria that was 3 established never used registration or race -- 4 racial demographics in the -- in production of 5 these maps. So that's why that information was 6 not available. But at any point you can go ahead 7 and request from staff what you think you need as 8 far as additional documentation. Okay? 9 Next question. 10 SEN. McKISSICK: Sure. If it's 11 possible -- and I understand these codes are -- 12 could probably be figured out and calculated. But 13 if we could actually put the names of the various 14 candidates on -- above these various categories. 15 Considering the amount of time that we have to 16 review and digest this information, it would save 17 an awful lot of time rather than going back and 18 forth between sheets to decipher the codes. There 19 may be codes that you guys are familiar with from 20 looking at it, but from someone seeing it upon 21 first impression, it becomes somewhat challenging 22 to -- to make certain of precisely what I'm 23 reviewing at any given point in time. So, I mean, 24 it would seem to be a simple thing to add in terms 25 of a category.</p>	<p style="text-align: right;">21</p> <p>1 REP. LEWIS: Thank you, Mr. Chairman. 2 Members, if you will look at the page 3 that's, of course, labeled at the top "2016 4 Contingent Congressional Plan," and then if you 5 will look in the second left-hand column, you will 6 see the code "EL08G_AG_D." Okay? Does everybody 7 see this particular document? 8 Okay. Then with that, if you'll go with 9 me, you'll see the first column says "District 1." 10 The second column is that code that I just gave. 11 The third column, if you would write the word 12 "Cooper," write the word "Cooper" at the top of 13 that column, it might make it easier to -- to 14 understand. If you would skip the next column, 15 which currently says "68,474," you'll get to the 16 following column. If you would write the word 17 "Crumley." 18 If you would then skip the following 19 column and go to the column that says 20 "EL08G_AD_D." Does everyone see that? The first 21 number is 233,665. If you would please write 22 the -- if you would skip right next -- right over 23 to the column that says "71.44" and write the word 24 "Wood," W-O-O-D. Wood. 25 And then skip the column that says</p>

<p style="text-align: right;">22</p> <p>1 "93,433." And then you'll come to "28.56," and</p> <p>2 write the word "Merritt," M-E-R-R-I-T-T.</p> <p>3 If you'll then skip the next column,</p> <p>4 which has "327098." And also skip the column that</p> <p>5 has the "220038."</p> <p>6 Yes, sir. I'm sorry. 220,038. If I</p> <p>7 could pause for just a minute.</p> <p>8 CHAIRMAN RUCHO: Yes, sir.</p> <p>9 (Representative Lewis and Chairman Rucho</p> <p>10 confer.)</p> <p>11 REP. LEWIS: So where it says "66.68,"</p> <p>12 you would write "Ansley" -- is that correct? And</p> <p>13 then you would skip the 109968 and get to the</p> <p>14 33.32, and write the word "Troxler,"</p> <p>15 T-R-O-X-L-E-R.</p> <p>16 If I could pause for only a moment to</p> <p>17 make sure the members understand. I chose, in my</p> <p>18 notes, to use the percentages of the votes cast.</p> <p>19 The numbers that I asked you to skip by are also</p> <p>20 relevant. That's number of raw votes cast, on the</p> <p>21 report.</p> <p>22 Okay. The next page that I have --</p> <p>23 CHAIRMAN RUCHO: And this is Election</p> <p>24 Results 2008, correct?</p> <p>25 REP. LEWIS: Yes, sir.</p>	<p style="text-align: right;">24</p> <p>1 a little bit more confusing than it has been.</p> <p>2 SEN. BROWN: It should be Odom.</p> <p>3 REP. LEWIS: On my notes, I skip over to</p> <p>4 where it says "EL08G_CL_D," for Commissioner of</p> <p>5 Labor. This is towards the right side of the</p> <p>6 page.</p> <p>7 SEN. BROWN: Mr. Chairman.</p> <p>8 (Representative Lewis and Chairman Rucho</p> <p>9 confer.)</p> <p>10 REP. LEWIS: Members, the Chairman has</p> <p>11 noticed me that I used the word "Causey" and</p> <p>12 should have used the word "Odom." I apologize.</p> <p>13 It's still the Republican nominee versus the</p> <p>14 Democratic nominee.</p> <p>15 If you'll look over where it says</p> <p>16 "EL08G_CL_D," that's for Commissioner of Labor.</p> <p>17 SEN. McKISSICK: The column beginning</p> <p>18 with the "328927"? Are you that far across?</p> <p>19 REP. LEWIS: No, sir. I actually skipped</p> <p>20 that --</p> <p>21 SEN. McKISSICK: Skipped that.</p> <p>22 REP. LEWIS: -- Senator, only because I</p> <p>23 was trying to go by my notes. And I will go back</p> <p>24 and refill the gaps in.</p> <p>25 SEN. McKISSICK: That's fine.</p>
<p style="text-align: right;">23</p> <p>1 The next page that I have begins with the</p> <p>2 code EL08G_CL_D. And the number in the first</p> <p>3 column is 232,552. If you would, to be</p> <p>4 consistent, go to the next column, which says</p> <p>5 70.70 percent, and write the word "Goodwin." This</p> <p>6 is the race for commissioner of insurance. The</p> <p>7 word "Goodwin."</p> <p>8 CHAIRMAN RUCHO: Representative Lewis,</p> <p>9 everybody has a -- what they call the 2016</p> <p>10 Redistrict Database Key, with the codes on it,</p> <p>11 too. So that should also be there, just for your</p> <p>12 information.</p> <p>13 Do you have that there, Senator</p> <p>14 McKissick? It's a two-page, front and back, and</p> <p>15 it gives you the code, the elections, the</p> <p>16 candidates.</p> <p>17 SEN. McKISSICK: Yes, sir, I do have it.</p> <p>18 CHAIRMAN RUCHO: Okay. So that's the key</p> <p>19 to using the database.</p> <p>20 REP. LEWIS: If it's all right, I'll just</p> <p>21 continue, Mr. Chairman.</p> <p>22 And then if you skip the next column at</p> <p>23 88227 to get to where it says "26.82," the word</p> <p>24 "Causey" should appear. Causey.</p> <p>25 And, Members, if you will, this might be</p>	<p style="text-align: right;">25</p> <p>1 Thank you, Mr. Chairman.</p> <p>2 REP. LEWIS: I apologize for that.</p> <p>3 But under the Commissioner of Labor,</p> <p>4 where it says "68.42," the name -- and I will</p> <p>5 apologize if I mispronounce the nominee's name,</p> <p>6 but it was D-O-N-N-A-N, Donnan. And then if you</p> <p>7 skip over to where it says "31.58," the nominee's</p> <p>8 name was Berry, B-E-R-R-Y.</p> <p>9 (Representative Lewis confers with</p> <p>10 Chairman Rucho.)</p> <p>11 CHAIRMAN RUCHO: Representative Lewis,</p> <p>12 that "W" is a write-in. Okay.</p> <p>13 REP. LEWIS: All right. Mr. Chairman and</p> <p>14 Members, I'll be happy to return to this page, but</p> <p>15 my notes are -- my notes are incomplete about that</p> <p>16 middle -- that middle section there. I think</p> <p>17 that's a write-in. But just to confer with the</p> <p>18 Chair, I don't want to state in the microphone</p> <p>19 something I'm not absolutely sure of.</p> <p>20 But anyway, moving on. The next page</p> <p>21 that I have --</p> <p>22 REP. STAM: Mr. Chairman. Mr. Chairman.</p> <p>23 Mr. Chairman. Woohoo.</p> <p>24 CHAIRMAN RUCHO: Yes, sir.</p> <p>25 Representative Hager. Oh, Stam. Excuse me.</p>

<p style="text-align: right;">26</p> <p>1 REP. STAM: I'm searching. Is there 2 maybe some -- some motion or somehow where we 3 could relieve Representative Lewis from this 4 tedious task. Maybe we've all sort of gotten the 5 idea now and we could just -- just an idea. Just 6 an idea. 7 CHAIRMAN RUCHO: Good question. 8 Senator McKissick, now that we've 9 identified a key for you, are you comfortable in 10 as far as being able to relate the specific name 11 to this, or would you want us to go through it 12 and -- 13 SEN. McKISSICK: What would be helpful, 14 if we don't have the information available now -- 15 I mean, it would be great, perhaps, if staff -- I 16 mean, I understand you can't get it on there 17 because of, I guess, software limitations in the 18 way you can categorize this stuff. But it 19 would -- I think the exercise we're going through 20 provides very valuable -- 21 CHAIRMAN RUCHO: Fine. Then we will -- 22 we will continue. 23 SEN. McKISSICK: But I don't want to be 24 laborious. 25 CHAIRMAN RUCHO: Representative Lewis --</p>	<p style="text-align: right;">28</p> <p>1 that has "USS," for United States Senate. The 2 Democrat would be Hagan, the Republican would be 3 Dole, the Libertarian would be Cole. 4 Is everybody kind of getting comfortable 5 with this? 6 Okay. And that would complete that page. 7 The others would be write-ins and whatnot. So 8 we'll turn the page to the one that begins "2010 9 General." 10 This race is the race for the U.S. Senate 11 in 2010. The column that says "USS_D" would be 12 Marshall, M-A-R-S-H-A-L-L. The column that has _R 13 would be Burr, B-U-R-R. _L would be Beitler, 14 B-E-I-T-L-E-R. Again, I apologize if I 15 mispronounce a name. 16 Turning to page, Election Results 2012 17 General, G and LG. Again, where it says 18 "EL12G_GV_D," the first column would be Dalton, 19 D-A-L-T-O-N. The same -- the corresponding column 20 with an "R" on it would be McCrory. Corresponding 21 column with an "L" on it, for Libertarian, would 22 be Howe, H-O-W-E. There was a write-in that -- 23 that's there. And then a write-in miscellaneous. 24 So that's what those other G's are there. 25 The one that says "LG_D" would be Coleman,</p>
<p style="text-align: right;">27</p> <p>1 We'll -- we'll continue. 2 Representative Lewis, please continue. 3 REP. LEWIS: Okay. The next one in the 4 stat pack, it reads -- starts with "EL08G_GV_D." 5 Let me see if I can speed up a little bit 6 here. In 2008-GV-D, if you'll look there, 7 obviously the "D" is for Democrat. That would be 8 Perdue, P-E-R-D-U-E. If you look over to the 9 column that has "R," that would be McCrory, 10 M-C-C-R-O-R-Y. And then if you see the column 11 with the "L," for Libertarian, that would be 12 Munger, M-U-N-G-E-R. 13 Now I know what you want me to look at, 14 I'll do it faster. I apologize. 15 CHAIRMAN RUCHO: Okay. 16 REP. LEWIS: Continuing on. 2008, where 17 it says "EL08LG" -- does everybody see that? That 18 would be Dalton. 2008 LG R would be Bittinger. 19 And the "L," the Libertarian, would be Rhodes, 20 R -- R-H-O-D-E-S. I believe that completes that 21 page. 22 Turn next to the one that begins "EL08G 23 -SPI." The "D" there would be Atkinson, 24 A-T-K-I-N-S-O-N. The "R" would be Morgan, 25 M-O-R-G-A-N. And then the -- you see the column</p>	<p style="text-align: right;">29</p> <p>1 C-O-L-E-M-A-N. LG_R would be Forest, F-O-R-E-S-T. 2 And that will complete that page. 3 Turning now to the Election Results 2012 4 General. The one that begins "AD," of course, for 5 Auditor. The Democrat, the "D," nominee would be 6 Wood, and the "R" nominee would be Goldman, 7 G-O-L-D-M-A-N. 8 Then where you see it says "_CA_D" for 9 Commissioner of Agriculture, the Commissioner 10 nominee for the Democratic Party is Smith, 11 S-M-I-T-H. _R, the Republican, is Troxler, 12 T-R-O-X-L-E-R. 13 Also on that page is "CI," for 14 Commissioner of Insurance. The Commissioner of 15 Insurance, the Democratic nominee is Goodwin, 16 G-O-O-D-W-I-N, and the Republican is Causey, 17 C-O -- C-A-U-S-E-Y. That completes that page. 18 Turning over where you see the next kind 19 of -- thinking you're getting the feeling of how 20 this works now. The "CL" is Commissioner of 21 Labor. CL_D would be the Democratic nominee. The 22 last name was Brooks, B-R-O-O-K-S. The _R, the 23 Republican nominee, would be Berry, B-E-R-R-Y. 24 That will complete that race. 25 Where it says "SS," that's Secretary of</p>

<p style="text-align: right;">30</p> <p>1 State. The "SS_D," the nominee would have been 2 Marshall, M-A-R-S-H-A-L-L. And the SS_R, the 3 Republican, would have been Goodwin, 4 G-O-O-D-W-I-N. 5 Turning to the following page, you see it 6 says "SPI," which is, of course, superintendant of 7 public instruction. Superintendent of public 8 instruction, D, Dr. Adkinson was the nominee, 9 A-D-K-I-N-S-O-N. And _R, the Republican was 10 Tedesco, T-E-D-E-S-C-O. 11 Also on that page, you see "Treasurer," 12 or TR. The Democratic -- the _D, for the 13 Democratic nominee, is Cowell, C-O-W-E-L-L. _R, 14 the Republican, was Royal, R-O-Y-A-L. 15 And the final page is the 2014 United 16 States Senate race. This one, please notice the 17 first category is "USS_R." That would be Tillis. 18 So the Republican is listed first on this one. 19 And where it says 'USS_D,' the nominee, of course, 20 was Hagan. And where it says "_L," it was Haugh. 21 I apologize if I mispronounce that. It's 22 H-A-U-G-H. 23 Mr. Chairman, this -- this concludes this 24 part of the report. 25 CHAIRMAN RUCHO: Okay. Senator</p>	<p style="text-align: right;">32</p> <p>1 County whole. And that is the home of 2 Representative Price, based on the records that we 3 have in the General Assem -- the General Assembly. 4 And there are whole precincts in Durham that 5 connect to an area in Wake County. That area is 6 the home of Representative Holding. 7 Representative Adams is not bunked with any other 8 incumbent member, nor is any other sitting member 9 of the delegation. 10 But, Mr. Chairman, I would like -- 11 CHAIRMAN RUCHO: Yes. 12 REP. LEWIS: -- to direct staff or ISD as 13 quickly as possible to provide members with maps 14 that have the home location of the incumbent. 15 CHAIRMAN RUCHO: Addresses, locations. 16 All right. 17 Ms. Churchill, request that we go ahead 18 and get maps that will identify the location of 19 the incumbents, if you'll be kind enough. 20 Okay. 21 SEN. McKISSICK: One point of 22 clarification, Mr. Chairman, if I could. The 23 incumbent for District 13 would be whom? 24 REP. LEWIS: Representative Adams. 25 SEN. McKISSICK: That's what I was</p>
<p style="text-align: right;">31</p> <p>1 McKissick, you have everything you've asked for on 2 that. Next question. 3 SEN. McKISSICK: Yes. I was just looking 4 at the maps here, and I notice that it looks as if 5 there is a double-bumping, I think you had it 6 indicated doubling-bumping of -- of certain 7 incumbent members of our Congressional delegation. 8 And it looks as if Representative Alma Adams is 9 one of those. Okay. I think you said there were 10 two cases where there were double-bumped. Is that 11 what you indicated, or did I mistakenly hear what 12 your remarks were? 13 Yeah, I'm trying to figure out who the 14 other is. 15 REP. LEWIS: Well, Senator, I think 16 that's a very good question. And the location of 17 the homes of the incumbents should appear on this 18 map, so let me apologize for that. 19 What my remarks said earlier is that 20 there are two incumbent members of Congress that 21 were -- unfortunately had to be drawn into the 22 same district. They are Representative David 23 Price and Representative George Holding. 24 If you'll notice, the new 4th District 25 includes all of Orange County. It keeps Orange</p>	<p style="text-align: right;">33</p> <p>1 thinking. 2 And for 12, who do we have there? 3 REP. LEWIS: I do not believe -- there is 4 no current incumbent in -- in the proposed 12. 5 SEN. McKISSICK: Okay. So I'm looking 6 at -- 13 here would be Adams. 12 would be? 7 REP. LEWIS: Vacant? 8 SEN. McKISSICK: Vacant. 9 CHAIRMAN RUCHO: No incumbent. 10 SEN. McKISSICK: No incumbent? 11 CHAIRMAN RUCHO: Correct. 12 SEN. McKISSICK: Who would have formerly 13 been in 12? 14 That would have been -- 15 REP. LEWIS: Well, just to be clear. 16 SEN. McKISSICK: -- Adams' district 17 before. 18 REP. LEWIS: Just to be clear -- 19 CHAIRMAN RUCHO: Let him answer, please. 20 SEN. McKISSICK: Sure. 21 CHAIRMAN RUCHO: Thank you. 22 REP. LEWIS: One of the instructions 23 given by this committee was to do away with the 24 shape of the 12th. The 12th is now contained 25 entirely inside Mecklenburg County. So from my</p>

<p style="text-align: right;">34</p> <p>1 knowledge -- well, the fact that certainly 2 Representative Adams does not live in Mecklenburg 3 County; therefore, that's why she's -- her home 4 does not appear in Mecklenburg County. She lives 5 in Guilford County, to the best of my knowledge. 6 SEN. McKISSICK: Exactly. That's what I 7 was a bit confused about. 8 Okay. So what we have, we have a 9 district which Congresswoman Adams can run from, 10 which is the 13th District. Is that correct? 11 REP. LEWIS: Yes, sir. But I would 12 remind you that an individual seeking election to 13 the U.S. House does not have to reside in the 14 district which they run. 15 SEN. McKISSICK: I understand. 16 And in terms of applying these 17 performance characteristics to the 13th District, 18 would this be a Democratic- or Republican-leaning 19 district? 20 REP. LEWIS: Senator, I believe you would 21 need to look race by race. And by "race by race," 22 I'm referring, of course, to the political races. 23 The data that we just went through, I believe the 24 district would be one of the ten that lean 25 Republican.</p>	<p style="text-align: right;">36</p> <p>1 it is a -- perhaps a very strongly Republican 2 leaning district, particularly looking at the 3 counties that are contained within it. And I was 4 thinking about their historical representation 5 here in the General Assembly. 6 And I see the 12th being carved out. But 7 I guess this all just gives me concern receiving 8 it all so quickly, trying to digest it quickly, 9 trying to move forward with this at -- what is 10 almost like the speed of light. And while I 11 appreciate the fact that there were some funds 12 made available to the minority caucus to, perhaps, 13 get maps drawn, to be candid with you, to get maps 14 drawn on a short notice and short order, within 15 24 hours, has proven to be very challenging. 16 So I will thank you for the information 17 you provided. It does provide me with some 18 concerns, which I've articulated. And I'm -- it 19 would certainly be nice if we did have the 20 Republican/Democratic breakout in terms of 21 registrations. And if I'm talking to Erika, she 22 can get that. Is there any way, perhaps, staff 23 can also -- I know it wasn't one of the criteria 24 used in drawing these maps, but they can filter 25 down a subcategory that would have provided us</p>
<p style="text-align: right;">35</p> <p>1 SEN. McKISSICK: That would lean 2 Republican? 3 REP. LEWIS: Yes, sir. 4 SEN. McKISSICK: Okay. 5 CHAIRMAN RUCHO: Follow-up. 6 SEN. McKISSICK: Follow-up, if I could. 7 CHAIRMAN RUCHO: Follow-up. 8 SEN. McKISSICK: In the three districts 9 you have identified as being Democratic districts, 10 I assume what we're looking at is the 1st 11 District, the 4th District, and the 12th District. 12 Would that be a logical assumption, or do I stand 13 to be corrected? 14 REP. LEWIS: No, sir. You are correct in 15 your -- in your -- in your analysis. 16 CHAIRMAN RUCHO: Follow-up. 17 SEN. McKISSICK: Yeah. And -- and I 18 guess the follow-up I have is that I -- I do have 19 concern -- I mean, I see that we have certainly 20 provided Representative Adams with a district to 21 run from. I need to drill down deeper to see the 22 numbers and see how close of a district that is in 23 terms of her capacity to compete. And I've not 24 had a chance to drill down those numbers yet, but 25 I assume, based upon what you've indicated, that</p>	<p style="text-align: right;">37</p> <p>1 with the racial breakout of each district? Is 2 that possible to obtain from staff even though I'm 3 aware with respect to the fact it was not a -- 4 CHAIRMAN RUCHO: Senator McKissick, let 5 me get clear now. You're requesting some data 6 on -- on the registration of the 13 districts, and 7 you're requesting the data and the demographics on 8 the -- the racial breakdown on the 13 districts? 9 SEN. McKISSICK: That is correct, 10 Mr. Chair. 11 CHAIRMAN RUCHO: Okay. Now, just as a 12 bit of a information, you talk about a -- a time 13 schedule. Well, we're all under a very tight time 14 schedule since the Court gave us two weeks -- or 15 14 days to do it, and it occurred on a Monday -- 16 on a Friday night, so it really kind of brought it 17 down to ten days. And so this is a heroic effort 18 that we could even get all of this accomplished in 19 that short of period of time. So we're all under 20 tight -- tight time schedules, just for your 21 information. Thank you. 22 SEN. McKISSICK: I respect that. It's 23 just that you knew the attributes before 24 yesterday. And we learned them yesterday. 25 CHAIRMAN RUCHO: Thank -- thank you.</p>

<p style="text-align: right;">38</p> <p>1 And, Members of the Committee, any --</p> <p>2 Senator Clark.</p> <p>3 SEN. CLARK: Mr. Chair, I have a question</p> <p>4 for staff.</p> <p>5 CHAIRMAN RUCHO: Say it again, please.</p> <p>6 SEN. CLARK: Question for staff.</p> <p>7 CHAIRMAN RUCHO: Yes.</p> <p>8 SEN. CLARK: If we provided a stat pack</p> <p>9 based on this 2011 database, would that provide</p> <p>10 Senator McKissick everything he's asking for and</p> <p>11 then some?</p> <p>12 CHAIRMAN RUCHO: Ms. Churchill, do you</p> <p>13 have a response to that?</p> <p>14 MS. CHURCHILL: I believe Senator Clark</p> <p>15 is asking if -- would the 2011 stat pack that was</p> <p>16 generally presented to the General Assembly during</p> <p>17 that round of redistricting, would that answer</p> <p>18 Senator McKissick's questions. I believe Senator</p> <p>19 McKissick is shaking his head, no, it would not</p> <p>20 answer his questions.</p> <p>21 SEN. McKISSICK: It would.</p> <p>22 MS. CHURCHILL: The one thing that</p> <p>23 definitely was in the stat pack was the party</p> <p>24 registration information. So, yes, it would at</p> <p>25 least answer that piece of it.</p>	<p style="text-align: right;">40</p> <p>1 Brown.</p> <p>2 SEN. BROWN: Just a quick comment, just</p> <p>3 to talk about the 13th District and its</p> <p>4 competitiveness. The Democrats have won that</p> <p>5 district, if you'll look through this, on several</p> <p>6 occasions. So it's obviously a competitive</p> <p>7 district because they have won some races in that</p> <p>8 district.</p> <p>9 CHAIRMAN RUCHO: Okay. Representative</p> <p>10 Michaux.</p> <p>11 REP. MICHAUX: Mr. Chairman, following up</p> <p>12 on what Senator McKissick asked for -- and you</p> <p>13 might wonder why, even though you have taken out</p> <p>14 race as a criteria, we still need to have race</p> <p>15 mentioned in here because of the Section 2 Voting</p> <p>16 Rights Act. You've got -- we've got to have that</p> <p>17 information in there. And there's a determination</p> <p>18 of whether or not Section 2 has been violated in</p> <p>19 this -- in this map.</p> <p>20 CHAIRMAN RUCHO: Representative Lewis,</p> <p>21 you have a comment on that, please.</p> <p>22 REP. LEWIS: Mr. Chairman,</p> <p>23 certainly Representative Michaux is much more</p> <p>24 learned in this area than I am.</p> <p>25 I just want to state, again, for the</p>
<p style="text-align: right;">39</p> <p>1 CHAIRMAN RUCHO: All right. Follow-up.</p> <p>2 SEN. McKISSICK: What I would like to</p> <p>3 have provided is a stat pack based on 2011</p> <p>4 database applied to the districts as shown here on</p> <p>5 this map.</p> <p>6 CHAIRMAN RUCHO: Staff, can we accomplish</p> <p>7 that?</p> <p>8 It will be accomplished.</p> <p>9 SEN. McKISSICK: Thank you.</p> <p>10 CHAIRMAN RUCHO: And as Representative</p> <p>11 Lewis said, we'll be -- you'll be getting all of</p> <p>12 the data you need. It won't be before this</p> <p>13 committee today, because it will take time to</p> <p>14 achieve it. Had, I'm sure, individual members had</p> <p>15 made requests on some of that, we probably could</p> <p>16 have gotten it done, but not during this time.</p> <p>17 But there are opportunities to, again,</p> <p>18 review the maps. There will be redistricting</p> <p>19 committee meetings that we'll have another chance</p> <p>20 to review it. And then, of course, on the floor,</p> <p>21 both in the House and the Senate.</p> <p>22 So, Senator McKissick, I want you to rest</p> <p>23 up; you're going to have plenty of opportunity.</p> <p>24 SEN. McKISSICK: Thank you.</p> <p>25 CHAIRMAN RUCHO: Okay. I've got Senator</p>	<p style="text-align: right;">41</p> <p>1 record on -- for this committee that race was not</p> <p>2 considered in the drawing of this map. Later</p> <p>3 today, we're going to ask this committee to adopt</p> <p>4 this map. After this map is adopted and prepared</p> <p>5 for introduction to the General Assembly, I</p> <p>6 believe the -- Senator McKissick requests, and</p> <p>7 perhaps Senator Clark requests, and now that</p> <p>8 Representative Michaux requests, would be to take</p> <p>9 this map and to populate it with the data that</p> <p>10 they have asked for. That can certainly be done</p> <p>11 after this committee adopts this map and -- and as</p> <p>12 it moves forward.</p> <p>13 CHAIRMAN RUCHO: Yes, sir. Follow-up.</p> <p>14 REP. MICHAUX: But -- but would not that</p> <p>15 information now help us to make a determination as</p> <p>16 to how we wanted to vote out of this committee on</p> <p>17 these -- on this map?</p> <p>18 REP. LEWIS: Thank you for that question,</p> <p>19 Representative. The information on race is simply</p> <p>20 not available to provide to you at this moment on</p> <p>21 this map.</p> <p>22 CHAIRMAN RUCHO: Follow-up?</p> <p>23 REP. MICHAUX: Then when is it going to</p> <p>24 be available and when are we going to have an</p> <p>25 opportunity to see it?</p>

<p style="text-align: right;">42</p> <p>1 REP. LEWIS: Well, just to be clear, 2 Representative -- and I want to clearly state 3 this -- as an individual member of this committee, 4 you can request whatever information on this map 5 on this -- on any district, on any county, on 6 anything that you want, but it will -- but race is 7 not going to be considered by this committee as we 8 adopt this map and recommend it to be passed by 9 the General Assembly. 10 REP. MICHAUX: Mr. Chairman? 11 CHAIRMAN RUCHO: Yes, sir. 12 REP. MICHAUX: My follow-up to -- to -- 13 to Representative Lewis. 14 Representative Lewis, the three-judge 15 panel found that these drawings were 16 unconstitutional and it was based predominantly on 17 race. There are other factors that you should -- 18 that should be considered in terms -- for 19 instance, as I said before, a violation of 20 Section 2 of the Voting Rights Act. We need -- 21 I'm not going to vote for another unconstitutional 22 map if I can't determine whether or not Section 2 23 is being violated by what you've done. 24 REP. LEWIS: Well, thank you for 25 clarifying, Representative Michaux. To the best</p>	<p style="text-align: right;">44</p> <p>1 REP. STAM: Would appropriate motion be 2 in order to give this a favorable report? I would 3 like to make such a motion at the appropriate 4 time. 5 CHAIRMAN RUCHO: All right. Well, thank 6 you. I think, actually, Representative -- Senator 7 Hise requested that earlier. So we'll do that. 8 Senator Blue, question. 9 SEN. BLUE: No question; just a comment. 10 CHAIRMAN RUCHO: All right. 11 SEN. BLUE: Mr. Chairman, I don't think 12 it takes much imagination to see exactly what 13 you've done here. In three districts -- that is, 14 the 1st, the 4th, and the 12th -- you've, again, 15 managed to stuff about half of the black 16 population in the state. And all you've got to do 17 is look -- you can -- you can name it whatever you 18 want to name it; it still is what it is. 19 When you just peruse very quickly the 20 statistics on all of these races, you see exactly 21 what is going on in each of these three districts. 22 You've got 66 to 68 percent -- you call it 23 "Democratic performance." But anybody who looks 24 at the numbers see that you're at the core of the 25 cities in this state and that the areas that you</p>
<p style="text-align: right;">43</p> <p>1 of my knowledge, you didn't vote for the 2011 2 plan. The plans that you voted for have, in fact, 3 been unconstitutional. 4 But let me continue in my answer. The 5 criteria that this committee adopted in open 6 debate yesterday was the following: Equal 7 population, contiguity, political data, partisan 8 advantage, the 12th District compactness, and 9 incumbency. That is the criteria that this 10 committee debated and adopted over about a 11 three-and-a-half, four-hour period. Those are the 12 criteria that were used to draw these maps. Those 13 are the criterion that these members will be asked 14 to base their decision on. 15 CHAIRMAN RUCHO: Representative Lewis. 16 (Chairman Rucho and Representative Lewis 17 confer.) 18 CHAIRMAN RUCHO: Representative Michaux, 19 you all set? 20 REP. MICHAUX: Yeah. 21 CHAIRMAN RUCHO: Very good. Thank you. 22 All right. Do we have anybody else 23 presenting a question or -- 24 REP. STAM: Mr. Chairman? 25 CHAIRMAN RUCHO: Yes, Representative Stam.</p>	<p style="text-align: right;">45</p> <p>1 extract are the -- are the primarily minority 2 communities, whether you're in Durham or Wake or 3 Mecklenburg. 4 The more important thing is that you 5 can't use partisanship as a proxy for race. And 6 that's exactly what you've done here. We know 7 because we've been unable to draw these maps 8 overnight. And you didn't draw them overnight 9 either. And we know that they were imported into 10 this place, and they weren't originally conceived 11 or drawn on the legislative computers. 12 But let me say this: The biggest 13 challenge that we have is basically the 14 dismantling of democracy that this map represents, 15 in that you create three districts that perform at 16 a 65 to 70 percent level for one party, then ten 17 districts that perform in the low to mid 50s range 18 for the other party. Now, you're assaulting 19 democracy even though you're doing it in the name 20 of partisanship. 21 And historically, the courts have said 22 that they're going to stay out of the political 23 thicket when it comes to gerrymandering based on 24 partisanship. 25 But I will tell you, this is such a bold</p>

<p style="text-align: right;">46</p> <p>1 and audacious move that it's probably what the 2 courts have been waiting for to wade into this 3 area. And I will assure you of that. And if you 4 think the people in this state are mad because of 5 the way you districted the last time, they're 6 going to be furious because of the way you're 7 doing this district. This is an abomination. It 8 is a direct assault on democracy. It is 9 disingenuous to think that you've now created 10 districts that don't take race into account just 11 because you say race hasn't been taken into 12 account.</p> <p>13 When we get the stat -- stat packs on 14 these districts, I will assure you of two things: 15 Number 1, the black voting age population in 16 Districts 1 and District 12 are equal or greater 17 than it was in the two districts that have been 18 rejected so far. And Number 2, that -- that in 19 the other district, District 4, I guess, where you 20 take Wake County and send it a certain way, you 21 will find the same kind of phenomenon.</p> <p>22 So I say that you might call it 23 partisanship in districting like this. But here 24 in the middle of Black History Month, it is as 25 pernicious as the same kinds of activity that has</p>	<p style="text-align: right;">48</p> <p>1 Yes, Representative Butterfield. 2 REP. FARMER-BUTTERFIELD: Thank you, 3 Mr. Chair. 4 I wanted to ask that we look at the 5 criteria we have that was adopted by this majority 6 yesterday and apply that to these three districts 7 for me. 8 REP. LEWIS: Certainly. 9 CHAIRMAN RUCHO: Representative Lewis. 10 And while he's preparing, can I remind 11 everybody here to please keep your maps so we can 12 have them and we don't have to cut down some 13 additional trees, if at all possible. And -- so 14 thank you. That and the stat packs. So bring 15 them and make them available for the redistricting 16 committee meetings, House and Senate, and on the 17 floor. 18 Representative Lewis. 19 REP. LEWIS: Mr. Chairman, could I just 20 clarify with Representative Farmer-Butterfield? 21 You wanted to go through three districts 22 that Senator Blue referred to based on the 23 criteria that was adopted. 24 Yes, ma'am. First of all, the first 25 criteria was equal population. The population of</p>
<p style="text-align: right;">47</p> <p>1 given a scar to so many Southern states over the 2 last 150 years. 3 You call it what you want. It is still 4 using race as a basis as to how you elect the 5 Congresspeople in North Carolina. 6 CHAIRMAN RUCHO: Representative Lewis. 7 REP. LEWIS: Mr. Chairman, I just point 8 out even Senator McKissick's acknowledged that 9 race was not a factor in drawing this map, Senator 10 Blue appears to want to try to create something 11 that does not exist. 12 So I will point out again: I have 13 already read the criteria. I will not -- I will 14 not belabor it. But the criteria that was used to 15 draw this map was adopted by this committee 16 yesterday and repeated by me a few minutes earlier 17 today. 18 CHAIRMAN RUCHO: Yes, sir. Thank you. 19 And -- and Senator Blue, when you use -- 20 say that using the partisan, that partisan was 21 never used. All it was is the political data 22 coming from elections, and you have that before 23 you. So for you to tie together race in that just 24 doesn't make any sense. So that -- that being 25 said --</p>	<p style="text-align: right;">49</p> <p>1 the 1st is 733,499. 2 The second criteria is contiguity. I 3 think you can look at the map -- and even this 4 map, if it's more helpful without county lines, 5 and be able to see that all the territory is 6 contiguous. It does touch. 7 Political data: I've provided that to 8 you. That shows what the election results were 9 within inside this district. 10 The partisan advantage: I've conceded 11 that Republicans don't have a great partisan 12 advantage in the 1st. 13 The 12th: The -- the drawing of the 14 1st -- the -- one of the criterion yesterday was 15 do away with the certain serpentine shape of the 16 12th. So that would not apply to the 1st. 17 Compactness: I think you will notice 18 that nearly every county in the 1st is a whole 19 county. You will see that there are three divided 20 counties in the 1st, Wilson being one of them. 21 That was done to take into account the residency 22 of the incumbent. Pitt -- Pitt was divided to -- 23 again, based on the requirement to have equal 24 population. And you'll see that Durham is divided 25 as well, as best I recall, as -- as a combination</p>

<p style="text-align: right;">50</p> <p>1 of the need to equalize population, and political</p> <p>2 concerns as well.</p> <p>3 In the 4th, the criteria for equal</p> <p>4 population is met. The population in the 4th is</p> <p>5 733,499.</p> <p>6 Contiguity: You'll notice that it is all</p> <p>7 of Orange County. It connects nicely through</p> <p>8 Durham in whole precincts. And you'll see that it</p> <p>9 connects into Wake. All of the area is</p> <p>10 contiguous.</p> <p>11 The area of political data I provided to</p> <p>12 you in the stat packs, the partisan advantage,</p> <p>13 I've conceded that I think the Republicans are</p> <p>14 going to have to work hard to win this seat.</p> <p>15 The 12th District: This -- the doing</p> <p>16 away with the serpentine 12th does not apply to</p> <p>17 the drawing of the 4th.</p> <p>18 Compactness: I think you can see that</p> <p>19 it's one whole county. It's -- it is, in my</p> <p>20 opinion, a very compact district. And in the area</p> <p>21 of incumbency, one incumbent member of Congress</p> <p>22 resides in Orange County. So it takes that into</p> <p>23 account as well.</p> <p>24 As far as the 12th goes, an area of equal</p> <p>25 population. The population of the 12th is</p>	<p style="text-align: right;">52</p> <p>1 Michaux had a question.</p> <p>2 REP. MICHAUX: Yeah. Mr. Chairman, I've</p> <p>3 just got a short question.</p> <p>4 Representative Lewis, do you believe that</p> <p>5 what you have done here, that African-American</p> <p>6 voters have a reasonable opportunity to elect</p> <p>7 candidates of their choice?</p> <p>8 REP. LEWIS: Representative Michaux, I've</p> <p>9 conceded that you're a brilliant man. I've</p> <p>10 conceded that you're a very good attorney. I'm</p> <p>11 going to answer that by saying these maps were</p> <p>12 adopted by the criteria -- were drawn by the</p> <p>13 criteria adopted by this committee. The winks and</p> <p>14 the nods are not going to change my answer. Or</p> <p>15 the smirks.</p> <p>16 CHAIRMAN RUCHO: Follow-up?</p> <p>17 REP. MICHAUX: That was the answer I</p> <p>18 expected.</p> <p>19 CHAIRMAN RUCHO: Okay.</p> <p>20 REP. LEWIS: Glad -- glad to oblige.</p> <p>21 CHAIRMAN RUCHO: All right.</p> <p>22 Representative Hager.</p> <p>23 REP. HAGER: Thank you, Mr. Chairman.</p> <p>24 Just a quick statement, if it's okay with you.</p> <p>25 As I sit here, we listen to the issues</p>
<p style="text-align: right;">51</p> <p>1 733,498.</p> <p>2 The contiguity: You'll see that it is</p> <p>3 all connected territory within Mecklenburg County.</p> <p>4 The political data I have provided to you,</p> <p>5 partisan advantage, I have conceded that the</p> <p>6 Republicans have to work really hard to win this</p> <p>7 seat.</p> <p>8 The 12th District: You will see it is</p> <p>9 certainly not a serpentine district that snakes</p> <p>10 all the way up through the state.</p> <p>11 Compactness: I think certainly you can</p> <p>12 recognize that it is compact.</p> <p>13 And incumbency for this particular</p> <p>14 district was not a consideration because there is</p> <p>15 not an incumbent residing in the 12th at this</p> <p>16 time.</p> <p>17 REP. FARMER-BUTTERFIELD: Thank you.</p> <p>18 CHAIRMAN RUCHO: Follow-up?</p> <p>19 REP. FARMER-BUTTERFIELD: Follow-up.</p> <p>20 I appreciate that information. It's</p> <p>21 certainly helpful, because I live in District 1.</p> <p>22 And I was also concerned about how District 12 was</p> <p>23 leading as it relates to party. So that's been</p> <p>24 real helpful.</p> <p>25 CHAIRMAN RUCHO: I've got Representative</p>	<p style="text-align: right;">53</p> <p>1 that we've had, and I want to commend Senator</p> <p>2 Rucho and Representative Lewis for the good job</p> <p>3 you guys have done on this. Thank you guys for</p> <p>4 your hard work.</p> <p>5 Senator Blue said that the people are</p> <p>6 mad -- or will be mad in North Carolina for --</p> <p>7 over these maps.</p> <p>8 Senator Blue, you know, the last three</p> <p>9 elections, we returned more and more Republican</p> <p>10 majorities in this House and the Senate. If</p> <p>11 they're mad, I think we -- they're mad you -- you</p> <p>12 mad -- may be mad at the wrong person.</p> <p>13 The Democrats in this case, in the</p> <p>14 minority party, have returned no maps. We don't</p> <p>15 have anything else to consider. Even though, as</p> <p>16 the way I understand it, that unless the</p> <p>17 Republicans had colluded with the radio stations</p> <p>18 and the TV stations to only deliver the message of</p> <p>19 a three-judge panel to Republican areas, that the</p> <p>20 minority party had the same amount of time to</p> <p>21 bring maps forward. Two weeks, as far as I</p> <p>22 understand, that Representative Lewis and Senator</p> <p>23 Rucho worked to get this -- get these maps to us.</p> <p>24 You know, at the end of the day,</p> <p>25 Representative Michaux talks about Section 2 of</p>

<p style="text-align: right;">54</p> <p>1 the VRA. What he fails to mention is there's a 2 three -- let me -- let see if I got it right. A 3 three-threshold condition to be met. We didn't 4 talk about those. We can go over those. 5 I think it's not just as simple as saying 6 the VRA says -- Section 2 says you've got to do 7 this. And, you know, what I find strange is a lot 8 of the -- these three -- three conditions were met 9 on the Supreme Court decision on Thornburg -- 10 Thornburg versus Gingles that was because of 11 Democrat-drawn maps back in the '80s. So I find 12 that very ironic that these were pushed forward 13 because of past Democratic-controlled maps that 14 were drawn. 15 So I say all of this to say that, you 16 know, these guys have worked hard. They've 17 complied to the three-judge panel, even though I 18 think all of us on this side of the aisle believe 19 that the maps were -- drawn originally were 20 constitutional. 21 So I think what we ought to do, 22 Mr. Chairman, is move this map forward and go 23 ahead and vote on it, and let's vote on it and get 24 it out so we can all go home. 25 CHAIRMAN RUCHO: Thank you,</p>	<p style="text-align: right;">56</p> <p>1 SEN. McKISSICK: So point of 2 clarification, Mr. Chair. 3 CHAIRMAN RUCHO: Follow-up question. 4 SEN. McKISSICK: If we were to provide a 5 jump drive or -- will they be like a jump drive or 6 some device available where we could obtain that? 7 CHAIRMAN RUCHO: Ms. Churchill, do you 8 have any answer to that? 9 MS. CHURCHILL: Senator McKissick, from 10 the chair's instructions for posting on the Web, 11 the block assignment file will be on the Web 12 following the conclusion of this meeting. 13 SEN. McKISSICK: On the Web it will be 14 available? 15 MS. CHURCHILL: Yes, sir. 16 SEN. McKISSICK: Thank you. 17 MS. CHURCHILL: Okay. 18 CHAIRMAN RUCHO: Representative Jones. 19 REP. JONES: Thank you, Mr. Chairman. 20 I just want to take the opportunity, 21 perhaps with Representative Hager, and just 22 commend the chairs and everyone involved for the 23 work here under very difficult circumstances and 24 very difficult time limits to be able to comb back 25 with something like this.</p>
<p style="text-align: right;">55</p> <p>1 Representative Hager. 2 Representative Lewis, comments? 3 REP. LEWIS: No, sir. 4 CHAIRMAN RUCHO: Okay. I've got Senator 5 McKissick for a question. 6 Excuse me, I had Representative Jones. 7 Okay. He -- he offers you to have first 8 voice. 9 SEN. McKISSICK: And this is a question 10 of co-chairs or perhaps of staff. I was wondering 11 if we could get a copy of the plan in a digital 12 format that we -- say, on a jump drive or 13 something like that, that can be downloaded to a 14 database for further analysis? 15 REP. LEWIS: Mr. Chairman -- 16 SEN. McKISSICK: And if so, when that 17 might be available. 18 REP. LEWIS: Mr. Chairman? 19 CHAIRMAN RUCHO: Yes, sir. 20 Representative Lewis. 21 REP. LEWIS: Thank you, Mr. Chairman. 22 I would like to state for the record that 23 staff has been instructed as soon as this 24 committee adopts this plan to make that 25 information available.</p>	<p style="text-align: right;">57</p> <p>1 And I just wanted to kind of reiterate 2 the fact of the compactness of the districts. 3 Just for the benefit, perhaps, of the people -- 4 people listening in that may not understand or 5 just to reiterate that with Congressional 6 districts, it's absolute zero deviation. 7 People ask sometimes, well, why do you 8 divide a county? And the answer is, it's 9 impossible not to. 10 But for you to draw 13 Congressional 11 districts and only divide 13 counties, only divide 12 13 precincts, is quite commendable and goes beyond 13 what should be expected. And I think you-all have 14 done an absolute brilliant job in doing that. And 15 obviously you know that whatever map you came back 16 with, you were going to be subject to some type of 17 criticism that we've heard here today, and no 18 doubt will hear going forward. 19 But I will say this, and going back, 20 perhaps, to a few of the comments that were made 21 yesterday, which we won't repeat. But when the 22 minority party was in the majority, I think it's 23 pretty clear that they stopped at no limits when 24 it came to political gerrymandering to their 25 advantage.</p>

<p style="text-align: right;">58</p> <p>1 When you look at the legislative maps</p> <p>2 that were drawn back in the previous decades, with</p> <p>3 two-member districts, three-member districts,</p> <p>4 four-member districts, however a district had to</p> <p>5 be drawn in order to gain that political favor --</p> <p>6 favoritism for the majority at the time, there was</p> <p>7 no stone left unturned. But, yet, you've come</p> <p>8 back with a map here that has -- has answered the</p> <p>9 critics, has compiled -- complied with the law as</p> <p>10 the judge panel suggested. And I -- I think you</p> <p>11 really need to be commended.</p> <p>12 And briefly, I just wanted to add to</p> <p>13 something that Senator Brown mentioned earlier</p> <p>14 with the 13th district. But I will take issue</p> <p>15 with those that would say that you cannot elect</p> <p>16 Democratic members in these districts. If you --</p> <p>17 if you look at the data that we've been given --</p> <p>18 for instance, the very first race on the -- on the</p> <p>19 sheet, 2008 Attorney General race, which was a</p> <p>20 contested partisan race, I would -- I would point</p> <p>21 out that the Democratic candidate won 13 out of</p> <p>22 the 13 Congressional districts.</p> <p>23 If you look at the next one, which was</p> <p>24 the auditor's race, the Democratic candidate won</p> <p>25 nine of the 13 districts. If you go to the next</p>	<p style="text-align: right;">60</p> <p>1 and weren't offered anything from the majority</p> <p>2 party to help us towards that goal. Am I correct</p> <p>3 in that? I was -- kind of remembered that.</p> <p>4 CHAIRMAN RUCHO: Yes, sir. Those were</p> <p>5 unconstitutional districts, if you remember.</p> <p>6 SEN. APODACA: Yeah, they were.</p> <p>7 But I -- you know, I'm struck -- you</p> <p>8 know, I look at this wall and all of these maps.</p> <p>9 And I would say, I would submit, that this map is</p> <p>10 probably the best map since 1980.</p> <p>11 Representative Michaux, I guess that was</p> <p>12 your tenth term. I don't remember how long you</p> <p>13 were here.</p> <p>14 Smile, Mickey.</p> <p>15 But, you know, we talk about splitting</p> <p>16 districts and we just talked about we have 13</p> <p>17 split districts. 2011, we had 32. 2001, we had</p> <p>18 27. 1998, we had 21. 1997, we had 20. And 1992,</p> <p>19 we had 44. So today, we have 13, with this</p> <p>20 proposed map, split districts. So --</p> <p>21 CHAIRMAN RUCHO: Counties.</p> <p>22 SEN. APODACA: Counties, excuse me.</p> <p>23 Counties split. Both, yeah.</p> <p>24 So this is much better than what we've</p> <p>25 had in the past, and I submit it to you.</p>
<p style="text-align: right;">59</p> <p>1 page and look at the commissioner of insurance</p> <p>2 race, the Democrat won eight of the 13 districts.</p> <p>3 So I think -- to give credit to the</p> <p>4 people of this state, we're not talking about</p> <p>5 robots. They do have an opportunity to vote for</p> <p>6 the candidates of your choice. And I think that</p> <p>7 they have shown that they will cross party lines</p> <p>8 or they will vote for the candidate of their</p> <p>9 choice, whether it's a Republican or a Democrat,</p> <p>10 which would suggest that if you have the right</p> <p>11 candidate, that you have an opportunity to win in</p> <p>12 any -- in any district. And I think that should</p> <p>13 be pointed out.</p> <p>14 Again, Representative Lewis, Senator</p> <p>15 Rucho, thank you-all for the hard work and look</p> <p>16 forward to supporting your efforts.</p> <p>17 CHAIRMAN RUCHO: Thank you.</p> <p>18 Senator Apodaca.</p> <p>19 SEN. APODACA: Thank you, Mr. Chairman.</p> <p>20 I think it might be good if we're talking</p> <p>21 about history month and history lessons, we have a</p> <p>22 little General Assembly history. I think back</p> <p>23 to -- Senator Rucho, what? 2003? When we had a</p> <p>24 hearing similar to this and we were told that we</p> <p>25 could find our own computer and draw our own maps</p>	<p style="text-align: right;">61</p> <p>1 CHAIRMAN RUCHO: Senator Brown.</p> <p>2 SEN. BROWN: Thank you, Mr. Chairman.</p> <p>3 I'm not sure I can say much more than</p> <p>4 Representative Jones and Senator Apodaca just</p> <p>5 touched on. I, too, was going to mention that in</p> <p>6 the '08 election, that Attorney General Cooper won</p> <p>7 every single one of these -- these districts.</p> <p>8 SEN. McKISSICK: That's what they're</p> <p>9 hoping for.</p> <p>10 SEN. BROWN: So I think that tells you</p> <p>11 the competitiveness of these districts.</p> <p>12 And again, to keep these maps where you</p> <p>13 only split 13 counties -- everybody needs to go</p> <p>14 home and try it, and I can promise you, it's hard</p> <p>15 to do it by splitting any less than that and keep,</p> <p>16 you know, the populations the same in each of</p> <p>17 these counties.</p> <p>18 So again, I -- I think this is a pretty</p> <p>19 dang good job, and I would hope that the members</p> <p>20 of -- that live in each of these counties</p> <p>21 appreciate the fact that we've tried to keep them</p> <p>22 as whole as we have. And I think it's a very good</p> <p>23 map. Thank you.</p> <p>24 CHAIRMAN RUCHO: Representative Michaux.</p> <p>25 REP. MICHAUX: Yeah, Mr. Chairman, since</p>

<p style="text-align: right;">62</p> <p>1 my name has been used in vain a little bit here.</p> <p>2 CHAIRMAN RUCHO: It was just a question</p> <p>3 of whether it was a tenth or the 16th term that</p> <p>4 you were at, at that point, I think.</p> <p>5 REP. MICHAUX: Well, at the term that he</p> <p>6 mentioned, I was a United States Attorney for the</p> <p>7 Middle District of North Carolina. So I wanted to</p> <p>8 clear that up. Make sure you understood. Just</p> <p>9 like you got your facts wrong on that one, you are</p> <p>10 wrong on this, too.</p> <p>11 But irrespective of -- irrespective of --</p> <p>12 SEN. APODACA: Mr. Chairman, may I ask</p> <p>13 Representative Michaux a question?</p> <p>14 CHAIRMAN RUCHO: In a moment.</p> <p>15 Finish up.</p> <p>16 REP. MICHAUX: If he wants to ask me a</p> <p>17 question, let him go ahead on.</p> <p>18 CHAIRMAN RUCHO: Go ahead.</p> <p>19 REP. MICHAUX: Ask him who he voted for</p> <p>20 in his first race?</p> <p>21 SEN. APODACA: I don't remember. I</p> <p>22 believe it was you. But we were all young at one</p> <p>23 time.</p> <p>24 Did you prosecute these maps when you</p> <p>25 were in the U.S. Attorney's Office?</p>	<p style="text-align: right;">64</p> <p>1 just wondering what's been determined and what has</p> <p>2 been proposed in terms of deadlines for filing</p> <p>3 periods in the postponement of the Congressional</p> <p>4 district elections? Because we clearly have</p> <p>5 situations here which would, in my mind, compel us</p> <p>6 to reset the Congressional district elections at a</p> <p>7 later date and reopen these final periods.</p> <p>8 So I was wondering what has been thought</p> <p>9 about or what has been considered in terms of new</p> <p>10 date for the Congressional district elections or</p> <p>11 proposed opening periods for filing of candidacy.</p> <p>12 Because otherwise, we end up with one district</p> <p>13 where there won't even be anybody.</p> <p>14 REP. LEWIS: Mr. Chairman.</p> <p>15 CHAIRMAN RUCHO: Yes, sir.</p> <p>16 REP. LEWIS: In an attempt to answer the</p> <p>17 Senator's question, it is the intent tomorrow,</p> <p>18 provided a stay is not issued, that a bill would</p> <p>19 be sourced to create a new redistricting map to</p> <p>20 comply with the decision in the Harris case.</p> <p>21 There will be a separate bill that would be</p> <p>22 sourced that would reestablish when the new</p> <p>23 Congressional election would be done. Obviously,</p> <p>24 there are factors to take into account, a certain</p> <p>25 amount of time it takes to get the ballots</p>
<p style="text-align: right;">63</p> <p>1 REP. MICHAUX: I didn't -- I didn't have</p> <p>2 to. I helped draw the ones in '80.</p> <p>3 CHAIRMAN RUCHO: Okay. You have a</p> <p>4 follow-up to that?</p> <p>5 REP. MICHAUX: Yeah. I just wanted to</p> <p>6 say, Mr. Chairman, that what -- what -- what</p> <p>7 Representative Hagar says, he needs to go back --</p> <p>8 I'm glad he's a student of the law because he</p> <p>9 needs to really go back. Section 2 is a valuable</p> <p>10 part of the Voting Rights Act. It is a part -- if</p> <p>11 you read the decision by the three-judge panel,</p> <p>12 Section 2 is mentioned in there. If you read the</p> <p>13 decision in the Alabama case, Section 2 is</p> <p>14 mentioned in there.</p> <p>15 All of these things fall in line. What</p> <p>16 you -- what you're basically doing here is trying</p> <p>17 to avoid using race, you have already brought race</p> <p>18 into the picture.</p> <p>19 CHAIRMAN RUCHO: Thank you.</p> <p>20 All right. Any other questions, Members</p> <p>21 of the Committee? Any --</p> <p>22 Yes, sir. Senator McKissick.</p> <p>23 SEN. McKISSICK: And it may be premature</p> <p>24 to ask this question. But assuming these maps are</p> <p>25 approved tomorrow and they go on to the Court, I'm</p>	<p style="text-align: right;">65</p> <p>1 prepared and mailed out and whatnot.</p> <p>2 But just for planning purposes, I</p> <p>3 believe, sir, you could anticipate that the -- the</p> <p>4 Senate would deal with the adoption of the maps</p> <p>5 first and the House would deal with the adoption</p> <p>6 of the new election schedule, and then the two</p> <p>7 would cross. And, you know, of course it would</p> <p>8 require action by both sides.</p> <p>9 I know that there are several members</p> <p>10 that have begun to work on this with our staff. I</p> <p>11 can't give you the exact dates now; frankly,</p> <p>12 because I don't know what they are.</p> <p>13 SEN. McKISSICK: Thank you.</p> <p>14 CHAIRMAN RUCHO: Follow-up. You all set?</p> <p>15 SEN. McKISSICK: I -- I think that</p> <p>16 clarifies it. I mean, do we have any proposed</p> <p>17 dates? I mean, are we talking about May for the</p> <p>18 election or...</p> <p>19 REP. LEWIS: Mr. Chairman?</p> <p>20 CHAIRMAN RUCHO: Yes, sir.</p> <p>21 REP. LEWIS: I'll be happy to try and</p> <p>22 share, or perhaps Representative Jones could meet</p> <p>23 with the senator after we adjourn.</p> <p>24 To my knowledge, the dates have not been</p> <p>25 finalized yet. I know that they're both in</p>

<p style="text-align: right;">66</p> <p>1 conversations with our central staff. I know 2 Representative Jones on the behalf of the House 3 has been in contact with the State Board. I 4 don't -- to be candid with you, I don't know that 5 we've set what the dates are just yet. 6 SEN. MCKISSICK: Okay. Thank you. 7 CHAIRMAN RUCHO: To -- to help out with 8 that, you know, having worked on the part when we 9 establish the filing and the like for the March 10 15th, there are seven days that the boards of 11 elections, both central and counties, are required 12 to do certain things. So what you do is you work 13 back, and that hasn't been done yet. Okay. 14 All right. Members of the Committee, I 15 don't see any additional questions or comments. 16 Senator Hise, for a motion? 17 SEN. HISE: Thank you, Mr. Chairman. 18 We've been tasked by the President Pro 19 Tem for the Senate and the Speaker of the House 20 with recommending a proposed contingent 21 Congressional map that complies with the trial 22 court's order in the matter of Harris versus 23 McCrory, to the extent that that order is not 24 stayed by higher authority. To comply with our 25 directive and after extensive debate today, I move</p>	<p style="text-align: right;">68</p> <p>1 THE CLERK: Rucho, aye. 2 Apodaca? 3 SEN. APODACA: Aye. 4 THE CLERK: Apodaca, aye. 5 Barefoot? 6 SEN. BAREFOOT: Aye. 7 THE CLERK: Barefoot, aye. 8 Blue? 9 SEN. BLUE: No. 10 THE CLERK: Blue, no. 11 Brown. 12 SEN. BROWN: Aye. 13 THE CLERK: Brown, aye. 14 Clark? 15 SEN. CLARK: No. 16 THE CLERK: Clark, no. 17 Harrington? 18 SEN. HARRINGTON: Aye. 19 THE CLERK: Harrington, aye. 20 Hise? 21 SEN. HISE: Aye. 22 THE CLERK: Hise, aye. 23 Jackson. 24 SEN. JACKSON: Aye. 25 THE CLERK: Jackson, aye.</p>
<p style="text-align: right;">67</p> <p>1 that the committee recommend favorably to the 2 General Assembly the contingent Congressional map 3 presented to the committee today by you and 4 Co-chairman Lewis, and that committee staff be 5 given leave to format this recommendation, 6 recommending contingent map as needed for 7 submission as a report of recommended legislation 8 to the General Assembly. 9 CHAIRMAN RUCHO: Thank you, Senator Hise. 10 Members of the committee, we have a 11 motion before us to adopt these maps and be able 12 to submit them to the General Assembly for the 13 short -- for the special session. 14 Any questions or comments? 15 (No response.) 16 CHAIRMAN RUCHO: All right. Seeing none, 17 Mr. Clerk, may we have a roll -- 18 THE CLERK: As per Senator Apodaca -- 19 CHAIRMAN RUCHO: -- roll call first. And 20 Senator Apodaca wants to be called first, if you 21 will be kind enough. 22 THE CLERK: We'll begin with the Senate. 23 CHAIRMAN RUCHO: Thank you. 24 THE CLERK: Rucho? 25 CHAIRMAN RUCHO: Aye.</p>	<p style="text-align: right;">69</p> <p>1 Lee? 2 SEN. LEE: Aye. 3 THE CLERK: Lee, aye. 4 McKissick? 5 SEN. MCKISSICK: No. 6 THE CLERK: McKissick, No. 7 Randleman? 8 SEN. RANDLEMAN: Aye. 9 THE CLERK: Randleman, aye. 10 Sanderson? 11 SEN. SANDERSON: Aye. 12 THE CLERK: Sanderson, aye. 13 Smith? 14 SEN. SMITH: No. 15 THE CLERK: Smith, no. 16 Smith-Ingram? 17 SEN. SMITH-INGRAM: No. 18 THE CLERK: Smith-Ingram, no. 19 Wade? 20 SEN. WADE: Aye. 21 THE CLERK: Wade, aye. 22 Wells? 23 SEN. WELLS: Aye. 24 THE CLERK: Wells, aye. 25 Lewis?</p>

<p style="text-align: right;">70</p> <p>1 REP. LEWIS: Aye. 2 THE CLERK: Lewis, aye. 3 Jones. 4 REP. JONES: Aye. 5 THE CLERK: Jones, aye. 6 Brawley? 7 REP. BRAWLEY: Aye. 8 THE CLERK: Brawley, aye. 9 Cotham. 10 REP. COTHAM: No. 11 THE CLERK: Cotham, no. 12 Davis? 13 REP. DAVIS: Yes. 14 THE CLERK: Davis, yes. 15 Farmer-Butterfield? 16 REP. FARMER-BUTTERFIELD: No. 17 THE CLERK: Farmer-Butterfield, no. 18 Hager? 19 REP. HAGER: Aye. 20 THE CLERK: Hager, aye. 21 Hardister? 22 REP. HARDISTER: Aye. 23 THE CLERK: Hardister, aye. 24 Haynes? 25 REP. HAYNES: No.</p>	<p style="text-align: right;">72</p> <p>1 Stevens? 2 REP. STEVENS: Aye. 3 THE CLERK: Stevens, aye. 4 CHAIRMAN RUCHO: Members of the 5 Committee, the roll was taken and you have 24 6 ayes, in favor of adoption of the maps, 11 noes. 7 That will be submitted to the General Assembly at 8 its special session. 9 I'll remind everyone again that please 10 save the maps that you have and bring them with 11 you so that we can be able to save staff time 12 in -- in trying to accomplish that. 13 The -- I think you need to stay tuned to 14 the -- to the e-mails for the next meeting, which 15 I'm assuming will be... 16 All right. Will be the call of the chair 17 and specifically on redistricting committee. 18 Representative Lewis, any additional 19 comments? 20 REP. LEWIS: Mr. Chairman, just an 21 announcement to the members: We've been informed 22 that the governor has called and has issued a 23 proclamation for an extra session. The General 24 Assembly will convene on Thursday, February 18th 25 at 10 o'clock a.m.</p>
<p style="text-align: right;">71</p> <p>1 THE CLERK: Haynes, no. 2 Hurley? 3 REP. HURLEY: Aye. 4 THE CLERK: Hurley, aye. 5 Jackson? 6 REP. JACKSON: No. 7 THE CLERK: Jackson, no. 8 Johnson? 9 REP. JOHNSON: Aye. 10 THE CLERK: Johnson, aye. 11 Jordan? 12 REP. JORDAN: Aye. 13 THE CLERK: Jordan, aye. 14 McGrady? 15 REP. McGRADY: Aye. 16 THE CLERK: Grady, aye. 17 Michaux? 18 REP. MICHAUX: No. 19 THE CLERK: Michaux, no. 20 Moore? 21 REP. MOORE: Nay. 22 THE CLERK: Moore, nay. 23 Stam? 24 REP. STAM: Aye. 25 THE CLERK: Stam, aye.</p>	<p style="text-align: right;">73</p> <p>1 CHAIRMAN RUCHO: Okay. Members of the 2 Committee, we're about ready to conclude our 3 meeting. But again, I will just let you know, 4 without objection, the chairs will sign this 5 report when it's prepared to be submitted to -- to 6 the General Assembly. 7 Okay. 8 REP. LEWIS: Mr. Chairman? 9 CHAIRMAN RUCHO: Yes, sir. 10 Representative Lewis. 11 REP. LEWIS: I just also wanted to state 12 for record that the Chair's acknowledged the 13 request from Senator McKissick, and perhaps 14 others, to make this information available and the 15 Chair's understand that may require additional 16 information than what's been provided here or what 17 was considered in drawing of the maps. 18 CHAIRMAN RUCHO: Okay. Ladies and 19 gentlemen, thank you for your attention, and this 20 committee is adjourned. 21 (The proceedings in this matter adjourned 22 at 5:37 p.m.) 23 24 25</p>

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STATE OF NORTH CAROLINA
COUNTY OF WAYNE

CERTIFICATE

I, Jennifer C. Carroll, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that on February 17, 2016, the proceeding was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding pages represents a true and accurate transcription of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 26th day of February, 2016.

Jennifer C. Carroll, RMR, CRR

Exhibit F

NORTH CAROLINA GENERAL ASSEMBLY
NORTH CAROLINA HOUSE OF REPRESENTATIVES

TRANSCRIPT OF THE PROCEEDINGS
FLOOR SESSION ONE (11:30 A.M.)

In Raleigh, North Carolina
Friday, February 19, 2016
Reported by Rachel L. Hammond, CVR-M

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

1 (Reporter's note: Proceedings in this matter
2 began at 11:30 a.m. on February 19, 2016.)

3 SPEAKER MOORE: The House will come to order.
4 Members will take their seats. Visitors will retire
5 from the chamber. The Sergeant-at-Arms will close the
6 doors. Members and guests are asked to please silence
7 all electronic devices.

8 This morning's prayer will be offered by
9 Representative Avila. We'd ask all members and all
10 guests in the gallery to please stand for the prayer
11 and remain standing for the Pledge of Allegiance.

12 Representative Avila.

13 (Prayer and the Pledge of Allegiance.)

14 SPEAKER MOORE: The gentleman from Harnett,
15 Representative Lewis, is recognized for a motion.

16 REP. LEWIS: Mr. Speaker, the journal for
17 February 18, has been examined and found to be correct.
18 I move that it stand approved as written.

19 SPEAKER MOORE: Representative Lewis moves that
20 the journal for February 18 be approved as written;
21 those in favor will say "aye."

22 (Voice vote.)

23 SPEAKER MOORE: Those opposed "no."

24 The ayes have it. The journal is approved as
25 written. Notices and announcements -- strike that.

1 Reports of standing committees.

2 Representative Lewis, the Chair on the
3 Committee -- the Redistricting Committee is recognized
4 to send forward the committee report. The clerk will
5 read.

6 CLERK: Representative Lewis Redistricting
7 Committee reported Senate Bill 2 2016 Contingent
8 Congressional Plan.

9 SPEAKER MOORE: Calendar for this morning.
10 Senate Bill 2, the clerk will read.

11 (Bill read by clerk.)

12 SPEAKER MOORE: The gentleman from Harnett,
13 Representative Lewis, is recognized to debate the bill.
14 The House will come to order.

15 Members, before the gentleman starts, I want to
16 remind the body we do have the court reporter with us
17 again here today. So all of the extra noise and the
18 chatter that is occurring makes it very difficult for
19 her to hear. So, again, if you need to have any extra
20 conversations, I would ask members to please step off
21 the floor to do so or to keep that to a very low tone.

22 The gentleman from Harnett has the floor to
23 debate the bill.

24 REP. LEWIS: Thank you, Mr. Speaker. Members
25 of the House, we are here today to comply with a court

1 order issued in the Harris versus McCrory case, which
2 instructed us not to hold the 2016 race for the United
3 States House of Representatives under the current map
4 and instructed us to redraw the districts. We, as you
5 know, have appealed and sought a stay of that decision.
6 However, as of this moment, that stay has not been
7 granted. We are still hopefully optimistic that it
8 will, in fact, come. However, out of respect for the
9 rule of law and the court's findings, I will present to
10 you today a 2016 Contingent Congressional Map. I will
11 point out that this map was created based on criteria
12 that was adopted by a Joint Select Committee of the
13 House and the Senate appointed by the Speaker and the
14 President Pro Tem; the committee adopted this criteria
15 on February 16.

16 I will point out to you the criteria on which
17 the maps before you were drawn. First, was the
18 criteria of equal population. All of the districts
19 were drawn with either 733,499 total persons or 733,498
20 total persons. This is as equal as practicable and is
21 in accordance with federal law. Another criteria was
22 contiguity. All the areas of every district are
23 composed within contiguous territories. Another
24 criteria was political data. The stat pack attached to
25 the maps placed on each one of your desk show which

1 election results were used in building these districts.
2 Race was not considered and is not present in these
3 reports. A further criteria was partisan advantage.
4 We believe that this map will produce an opportunity to
5 elect ten Republican members of Congress, but make no
6 mistake, this is a weaker map than the enacted plan in
7 that respect. The Committee further adopted criteria
8 to do away with the 12th district, which has been
9 described as serpentine in nature because of the shape,
10 the way it appears on a map. The drawing of this
11 corrected -- the drawing of this plan before you
12 corrects that. An additional criteria was compactness.
13 Only 13 counties and 12 voting districts were split in
14 this map. In accordance with the criteria, more whole
15 counties and more whole precincts are the best
16 indicator of compactness that we believe to be
17 available. An additional criteria adopted by the
18 committee was incumbency. In this map, only two
19 incumbent members of Congress reside in the same
20 congressional district, one Republican and one
21 Democrat. They are Representative Holding and
22 Representative Price, both of whom reside within the
23 geographic territory that makes up the proposed 4th
24 Congressional District. Eleven incumbents were placed
25 in a congressional district by themselves.

1 I want to offer only a bit of historical
2 context that I hope you will consider when you're
3 voting for those maps. The 1992 Congressional Plan
4 split 44 counties; the 1997 plan split 22 counties; the
5 1998 plan split 21 counties; the 2001 plan split 28
6 counties and 22 Voting Tabulation Districts; the 2011
7 Congressional Plan, which I'll refer to henceforth as
8 the enacted plan, split 40 counties and 68 voting
9 districts, or VTDs; and the map that you have before
10 you splits 13 counties and 12 VTDs.

11 I am very proud and appreciative of all of the
12 work that members of the committee gave, that our
13 central staff dedicated themselves to do. I appreciate
14 all of the members who brought forward constructive
15 advice on how to design these maps to comply with the
16 court decision. And I look forward to being able to
17 more fully debate and explain these maps as directed by
18 the Speaker. But I would ask for your support. I
19 believe that this is a major step forward and should
20 the stay not be granted by the U.S. Supreme Court, I
21 believe that this map, drawn in accordance with the
22 criteria that I have mentioned in my earlier remarks,
23 will help us comply with the court order from the
24 Harris case. And I would respectfully ask at the
25 conclusion of this debate that you would vote "aye" on

1 this bill. Thank you, Mr. Speaker.

2 SPEAKER MOORE: For what purpose does the
3 gentleman from Durham, Representative Michaux, arise?

4 REP. MICHAUX: To speak on the bill.

5 SPEAKER MOORE: The gentleman has the floor to
6 debate the bill.

7 REP. MICHAUX: Mr. Speaker and ladies and
8 gentlemen of the House, I'm not going to ask
9 Representative Lewis any questions on this. I think
10 that has been thoroughly covered in committee, and the
11 record has been made in committee on this. What I want
12 to do very simply is to caution you about what you're
13 about to do. And in order to set the framework for
14 that -- what I want to say about this, I want to quote
15 a couple of things from the Harris decision that got us
16 where we are today. The first is that on page 2 of
17 that decision -- page 3 it says, "This does not mean
18 that race can never play a role in redistricting.
19 Legislatures are almost always cognizant of race when
20 drawing district lines, and simply being aware of race
21 poses no constitutional violation. Only when race is
22 the 'dominant and controlling' consideration in drawing
23 district lines does strict scrutiny, strict scrutiny
24 apply." What the Court is saying very simply in this
25 is that race can still be used in drawing lines, but if

1 you use race, "strict scrutiny" applies. It doesn't
2 mean it can't be applied, but you have to look at it a
3 little bit closer than the way you normally look at.
4 What this body has done in this -- I'm sorry, what the
5 committee has done, is they have taken race out of the
6 equation totally and completely. In other words, this
7 map that you have before you today was drawn without
8 consideration of race.

9 Now everybody tries to think that we're going
10 to have a colorblind situation and wishes for one,
11 which is the ultimate dream in euphoria. Race will
12 always be there because there will always be
13 differences either race, class, whatever way you want
14 to put it. So you cannot, you cannot do maps without
15 including race as a part of it.

16 The second part of that, or other part of that
17 decision says this, "redistricting legislation must,"
18 and I repeat, "redistricting legislation must comply
19 with the Voting Rights Act of 1965." Many people have
20 thought that the Shelby case knocked out the Voting
21 Rights Act. It did not. It only knocked out Section 4
22 from the Voting Rights Act, that section which set up a
23 formula for which preclearance was required. The
24 Voting Rights Act of 1965 still stands. And I repeat,
25 that it says that any district lines must comply with

1 the Voting Rights Act of 1965. And in that same vein,
2 they said that, "the Voting Rights Act prohibits states
3 from adopting plans that would result in vote dilution
4 under section 2." So, Section 2 basically is the
5 operative clause under which we operate and draw
6 district lines.

7 Now, what you have done with this map is you
8 have gone in the complete opposite, and you have made
9 race a predominant factor again because you left it
10 out. You don't consider whether or not these districts
11 that have been drawn on this map create any dilution of
12 minority registrants, minority voting. You don't have
13 any clue as to whether or not minorities, African
14 Americans in particular, are able to elect
15 representatives of their choice. That's because you
16 cut out race as a factor in determining what these
17 lines are being drawn for. So I say that you set up an
18 unconstitutionally drawn map, and you're sending back
19 another unconstitutionally drawn map. But that is not
20 for me to decide. That is for the Court to decide.
21 But just taking a simple look at it you say, well, how
22 do we do this? All you have to do -- you don't have to
23 make it a predominant factor. You can look at it and
24 you can draw lines that fall within parameters that
25 don't make race a predominant factor and still

1 guarantee that you don't have voter dilution and still
2 guarantee that you have a position where African
3 Americans are able to elect persons of their choosing.

4 Now, there is one other thing I want to call to
5 your attention out of that same decision. It says that
6 there is strong evidence -- and this comes from the
7 Harris decision -- "There is strong evidence that race
8 was the only nonnegotiable criterion and that
9 traditional redistricting principles were subordinated
10 to race." I say again, "There is strong evidence that
11 race was the only nonnegotiable criterion." Here
12 again, in these maps that are being drawn, race is the
13 only nonnegotiable criterion that has brought these
14 maps about.

15 Finally, it says, "A congressional district
16 necessarily is crafted because of race, when a racial
17 quota is the single filter through which all
18 line-drawing decisions are made." Now, folks, it
19 doesn't take a rocket scientist or a mathematician to
20 figure that if you're going to draw district lines,
21 you've got to take into account the population of that
22 district. How it affects not just one part of the
23 population, but the total, the total population, and
24 that includes members of any ethnic group, any racial
25 group, anything. It all has to be considered. Here,

1 in this map that was drawn, none of that was
2 considered. And I say to you that I know what you're
3 going to do. Everybody is going -- both sides are
4 going to probably go lockstep, no question about it.
5 But what you're doing is you're setting up a situation
6 where there is a good possibility of you coming back
7 here again if the courts find that you have not
8 followed their instructions. They could send it back.
9 They could do it themselves, or they could put in a
10 Special Master to draw the lines. There are other
11 things here, everybody says, well, it is confusing.
12 Chaos reigns as a result of this. Well, folks, those
13 of us on this side did not cause that chaos. We were
14 never asked to have any input into this. We got -- to
15 give you an example, this map that you have drawn
16 today, I think the decision was handed down February 5
17 or February 6, and before any criteria was set up, I
18 understand from folks on the other side, that plans
19 were already being drawn and criteria was already being
20 set up -- not having been set up, but maps were being
21 drawn without that. And then to come in on, I think,
22 Tuesday of this -- Monday or Tuesday of this week and
23 pass criteria, and on Wednesday we've got a map, then
24 there's a problem. There are many things wrong with
25 this, and I know this was done in a hurry. But we need

1 to take the time to make sure that every facet of this
2 thing is covered. A lot of folks don't want to talk
3 about race. I don't particularly. One thing about my
4 good friend Martin Luther King, Jr., Martin told me --
5 I never heard him use the word "colorblind" because in
6 his thinking we will never have a colorblind society.
7 And unfortunately, or fortunately, it is here, and it's
8 faced. And we have to take it into consideration. And
9 when you take it out, then that becomes a predominant
10 factor in this whole thing. So you're going to do what
11 you're going to do, but I don't think you've seen the
12 end of this problem yet.

13 REP. LEWIS: Mr. Speaker.

14 SPEAKER MOORE: For what purpose does the
15 gentleman from Harnett, Representative Lewis, arise?

16 REP. LEWIS: Would the distinguished gentleman
17 from Durham yield to a question?

18 SPEAKER MOORE: Does the gentleman from Durham,
19 Representative Michaux, yield to the gentleman from
20 Harnett?

21 REP. MICHAUX: The gentleman will yield. I
22 don't know how distinguished he is.

23 SPEAKER MOORE: He yields.

24 REP. MICHAUX: I yield.

25 REP. LEWIS: Mr. Speaker, I appreciate not only

1 the distinguished but the well-dressed gentleman taking
2 time to yield to me.

3 Representative Michaux, you referenced the
4 Harris decision in your remarks. Would I be safe to
5 operate under the belief that you have it before you?

6 REP. MICHAUX: You -- yes, sir. Here it is,
7 yes.

8 REP. LEWIS: Thank you. May I ask another
9 question, Mr. Speaker?

10 SPEAKER MOORE: The gentleman is recognized for
11 a second question. Does the gentleman from Durham
12 yield?

13 REP. MICHAUX: Yes, I yield.

14 SPEAKER MOORE: He yields.

15 REP. LEWIS: Thank you, Mr. Speaker.

16 Representative, may I ask you to please look at page 57
17 of that opinion?

18 REP. MICHAUX: 57?

19 REP. LEWIS: Page 57, yes, sir. And, sir, the
20 particular --

21 REP. MICHAUX: Yes, sir, I have it.

22 REP. LEWIS: Right before the number 2 there,
23 there is a sentence that reads in part, "As the
24 defendants," which would have been us, "fail to meet
25 the third Gingles factor, the Court concludes that

1 section 2 did not require the defendants to create a
2 majority-minority district in CD 1." Is that not
3 saying that the Court finds that racially polarized
4 voting was not present or proven so that we shouldn't
5 have used it in drawing the map?

6 REP. MICHAUX: That's not what it says to me,
7 Representative Lewis. What it says to me is that there
8 was racially polarized showing in that. You didn't
9 meet the requirements, the third requirement of --
10 requirements in the Gingles case. Which set up the
11 fact that if you have racial polarization, you have got
12 to take into consideration these factors.

13 REP. LEWIS: Mr. Speaker, may I ask the
14 gentleman another question?

15 SPEAKER MOORE: Does the gentleman from Durham
16 yield to an additional question?

17 REP. MICHAUX: Yes, I yield.

18 SPEAKER MOORE: He yields.

19 REP. LEWIS: Thank you, Mr. Speaker, and thank
20 you, Representative. If I may, would you turn to
21 page 56 of the same opinion of which we were just
22 looking.

23 REP. MICHAUX: I have it, yes, sir.

24 REP. LEWIS: Thank you, sir. When the Court
25 writes, "the composition and election results under the

1 earlier version of CD 1 vividly demonstrate that,
2 though not previously a majority-BVAP district, the
3 white majority" -- this is the operative part I'd like
4 your advice on -- "the white majority did not vote as a
5 bloc to defeat the African-Americans' candidate of
6 choice. In fact, precisely the opposite occurred in
7 these two districts: significant crossover voting by
8 white voters supported the African-American candidate."
9 Does that not indicate that the Harris court did not
10 find racially polarized voting?

11 REP. MICHAUX: I'm not sure that it does,
12 Representative Lewis, because you have to have certain
13 iterations in these types of situations. It's known,
14 and it is a known fact, and it has been proved.
15 Gingles proved it and several of the other cases,
16 Stevens' case proved it, that whites sometimes
17 basically vote as a bloc in order to keep
18 African-Americans, or whatever ethnic group, out. And
19 that has happened -- it has happened in my case. I
20 personally had it happen to me. So this iteration in
21 here is actually stating what should not or could not
22 have to happen. And of course, you know, you're on
23 that segment. I've got that page marked also.

24 REP. LEWIS: May I ask the gentleman an
25 additional question?

1 SPEAKER MOORE: Does the gentleman from Durham
2 yield to an additional question?

3 REP. MICHAUX: Yes, sir.

4 SPEAKER MOORE: He yields.

5 REP. LEWIS: Just for the sake of this
6 conversation, Representative Michaux, and I've
7 acknowledged freely in earlier meetings that you are an
8 attorney and I'm not. You're much more versed in the
9 law. Would you acknowledge at least with me -- and I
10 apologize to skip around in this opinion, but do --
11 would I be correct to operate under the understanding
12 of this opinion that at least in the opinion issued in
13 the Harris court, that the third Gingles element of
14 establishing racially polarized voting per this court
15 decision was not met?

16 REP. MICHAUX: Yes, it says that.

17 REP. LEWIS: Thank you, sir. Mr. Speaker, may
18 I ask the gentleman another question on another subject
19 matter?

20 SPEAKER MOORE: Does the gentleman from Durham
21 yield to an additional question from the gentleman from
22 Harnett?

23 REP. MICHAUX: Yes, sir. I yield.

24 SPEAKER MOORE: He yields.

25 REP. LEWIS: Thank you, Mr. Speaker, and thank

1 you, Representative. You mentioned in your remarks the
2 map that is prepared before us and also perhaps the
3 steps that were taken in the preparation of those maps,
4 I was wondering, sir, if you would speak to what -- and
5 of course, I only ask for your personal knowledge, of
6 what steps the Democratic Party took, or the Democratic
7 members of this House took, to comply with the court
8 order that we were all notified about on February 6.

9 REP. MICHAUX: My answer to you, Representative
10 Lewis, on that is we were not ordered to comply with
11 that decision. You were ordered to comply with that
12 decision. We did not draw the maps. You drew the
13 maps, so that decision was aimed at you. The matter is
14 in court. If the Court wants our advice, we will give
15 them that advice. We tried to give you our advice on
16 the mistakes that you made. You could take them any
17 kind of way you see, and it comes back, you say, well,
18 the minority party helped us do this.

19 This is a problem that you created. This is a
20 problem that you have to solve. If the Courts want our
21 opinion on it, they will ask us, and we are prepared --
22 we will be prepared to answer any questions that the
23 Court raises with us on it. And by the way,
24 Representative Lewis, let me just -- since you are
25 referring to the opinion, you referred to page 55 on

1 that -- 56 on that. On 54, "Strikingly, there is no
2 evidence that the General Assembly conducted or
3 considered any sort of a particularized
4 polarized-voting analysis during the 2011 redistricting
5 process." So I just wanted to clear that up.

6 REP. LEWIS: Mr. Speaker, may I ask the
7 gentleman another question?

8 SPEAKER MOORE: Does the gentleman from Durham
9 yield to an additional question?

10 REP. MICHAUX: Anytime. Yes, sir.

11 SPEAKER MOORE: He yields.

12 REP. LEWIS: Thank you, Mr. Speaker, and thank
13 you, Representative. I just wanted to -- and this is
14 along the lines of the last question I asked, if I may.
15 Would it be fair to say that you, as a member of the
16 General Assembly, as a member of the Joint Select
17 Committee, and of the House Committee, while, by your
18 own remarks, had the opportunity to participate and
19 offer input to the map, have instead elected not to do
20 that and are preparing instead to offer maps that you
21 developed to the Court? So it would be fair to say
22 that you declined largely to constructively participate
23 in the legislative process, preferring to focus on the
24 judicial process?

25 REP. MICHAUX: In the joint meeting of the

1 committee, several amendments were offered by the
2 minority party. They were all killed. In other
3 instances in this body when we have tried to
4 participate and offer what we thought were constructive
5 amendments, whether some, even folks on your side have
6 agreed, we have been struck down. And here again, I
7 refer to my good friend Martin Luther King, Jr. Martin
8 said, Mickey, you have always got to be able to -- if
9 they hit you on one side to turn the other cheek and
10 let them hit you on -- you know, don't hit back. Well,
11 I've been hit on both cheeks by you-all, and I am just
12 not going to let you hit me anymore. And that's -- I
13 mean, that's it, Mr. Lewis, why should we, why should
14 we -- when you haven't sought our help in the beginning
15 and you haven't sought our help now. You haven't asked
16 us anything. You have already gone on and done these
17 maps before we even had a committee meeting.

18 REP. LEWIS: Mr. Speaker, may I ask the
19 gentleman another question?

20 SPEAKER MOORE: Does the gentleman from Durham
21 yield to an additional question from the gentleman from
22 Harnett?

23 REP. MICHAUX: Yes, I yield.

24 SPEAKER MOORE: He yields.

25 REP. LEWIS: Thank you, Mr. Speaker, and thank

1 you, Representative. I do not have the committee
2 minutes before me, and I am certainly prepared to be
3 corrected. Did members of the minority party, the
4 Democratic Party, offer amendments in the form of a map
5 or guidelines to how the map should look, or were those
6 amendments largely unrelated to the drawing of a map?

7 REP. MICHAUX: The amendments affected the
8 criteria under which the maps were to be drawn.

9 REP. LEWIS: Thank you, sir, for your time.
10 And thank you, Mr. Speaker.

11 SPEAKER MOORE: For what purpose does the
12 gentleman from Bladen, Representative Brisson, arise?

13 REP. BRISSON: To see if Representative Lewis
14 will yield for a couple of questions.

15 SPEAKER MOORE: Does the gentleman from Harnett
16 yield to the gentleman from Bladen?

17 REP. LEWIS: I do, Mr. Speaker.

18 SPEAKER MOORE: He yields.

19 REP. BRISSON: Thank you, Mr. Speaker. Thank
20 you, Representative Lewis. It may take me a minute
21 here to get through my questions, but in the beginning
22 when the Courts made the decision, it was certainly
23 on -- obviously it was on district 1 and 12, which was
24 two out of the 13 districts. And, I guess, I'm
25 certainly not speaking for any of the other members,

1 but I kind of assumed that should we -- evidently,
2 we've got a problem there. When we started off I
3 thought, I assumed, that maybe the problem could be
4 worked out in the general consensus of that district.
5 Do you understand what I'm saying? That maybe it
6 didn't involve the whole state. One of my questions,
7 how much time did the committee spend on concentrating
8 on trying to get in compliance in that general area
9 versus -- and when was the decision made to do it
10 statewide because it changed? In the original
11 committee was kind of -- I saw the members. It looked
12 like that it was maybe not intentionally set up, but
13 basically a lot of -- it was close by neighbors
14 involved in that general vicinity of the state on the
15 committee, maybe one or two scattered out away from,
16 kind of, more distant away. And after the two
17 questions that I'm trying to ask, and I'll them both is
18 how much time, or if any time was spent on just the
19 general consensus and vicinity of the question -- the
20 two districts in question? And at what time did the
21 committee decide to expand and redo the whole state?
22 And did the committee look at maybe taking a look at
23 the committee then when they went to the full state to
24 maybe justify expanding the committee or make sure we
25 have broader input from throughout the state?

1 REP. LEWIS: Thank you for that question,
2 Representative. Let me do my very best to answer.
3 First of all, you are right when you say the case that
4 was brought and adjudicated by the three-judge panel
5 involved the 1st Congressional District and the 12th,
6 not all 13. However, when you're drawing districts,
7 what you're talking about is assigning geographic areas
8 where 733,498 or 499 people can elect a member to the
9 U.S. House. So, when you change lines in one part of
10 the state, you are essentially moving people. And as
11 you move people that a cause in one district almost
12 certainly causes a change in those around it. So what
13 you'll notice when you look at the proposed map is that
14 some districts seem to have changed very little. The
15 11th, for instance, the mountain district, really I
16 think the only change that was made there had to do
17 with trying to equalize some population because
18 additional population had been pushed west, if you
19 will, from the 10th and from the 5th. So, as far as
20 the time spent, what the committee did was debate the
21 criteria that we felt would help us comply with the
22 Harris court decision. We respect the judges and want
23 to honor both the written law and the spirit in which
24 they issued the opinion. But in candor, there was not
25 a great deal of curative language in the opinion that

1 said had you done X, Y and Z, we would not have found
2 the way we found. So what the committee did instead is
3 it went through in a full and open session in which
4 amendments were, in fact, considered, and it adopted
5 criteria that it felt would help us be able to comply
6 with the court order. Those, as I have said, were the
7 equal population, the contiguity, the political data,
8 partisan advantage, doing away with the serpentine
9 nature of the 12th, compactness, and incumbency. So
10 once the committee adopted those criteria, we set about
11 and have been able to produce a map which is based on
12 those criteria.

13 I think what you're asking about in particular
14 is there are some counties that seem to be
15 geographically far away from either the 1st or the 12th
16 that their district lines have changed. And I will
17 openly concede that you are right in the observation
18 that you have made. But, again, for lack of a better
19 analogy, if you picture a child playing with a balloon,
20 when the child will squeeze the balloon in one part,
21 another part will change its shape. And that is
22 largely why districts all across the state changed.
23 But, again, I would point out, even though certain
24 counties may have changed the district they were in or
25 certain counties may be divided that weren't divided

1 before, this map divides only 13 counties and only 12
2 VTDs. So this map, to the extent that it has to be
3 used because a stay is not granted, at least based on
4 the criteria adopted by the committee, is a superior
5 map and we believe complies with what we were ordered
6 to do by the Court.

7 REP. BRISSON: Thank you.

8 SPEAKER MOORE: Does the gentleman from Bladen
9 wish to ask an additional question?

10 REP. BRISSON: I just --

11 SPEAKER MOORE: Or does the gentleman wish to
12 debate the bill?

13 REP. BRISSON: I just wanted to ask to make
14 sure that I got my question, both questions answered.

15 SPEAKER MOORE: Does the gentleman from Harnett
16 yield to an additional question?

17 REP. LEWIS: I yield.

18 SPEAKER MOORE: He yields. The gentleman is
19 recognized -- and Representative Brisson, I am trying
20 to do this orderly because the court reporter is trying
21 to make a record, so bear with me on that. The
22 gentleman has the floor for a question.

23 REP. BRISSON: Thank you, Mr. Speaker. Thank
24 you, Representative Lewis. What -- so did the
25 committee ever look at expanding when we decided to

1 go -- that was one of my questions, expanding the
2 committee to make sure that we had a pretty much
3 representation statewide on the committee?

4 REP. LEWIS: Thank you for that question,
5 Representative. And I did fail to answer it the first
6 time you asked it, I apologize. The Speaker and the
7 President Pro Tem made these appointments about a week
8 ago today. We have been operating under -- I think
9 even those opposed to the maps, would acknowledge that
10 we have been operating under a very compressed
11 timetable. And when the decisions were made, I did not
12 ask the Speaker and the President Pro Tem to expand the
13 membership of the committees. They certainly have the
14 authority to do that. I don't even know, in candor,
15 that it was contemplated to expand the committee. We
16 did make clear though, in every effort that we could,
17 that all members of the General Assembly, regardless if
18 they were voting members of the committee or not, were
19 encouraged to attend the committee and were certainly
20 given a chance to speak. I think, in fact, I think
21 several did actually ask questions or take part in the
22 debate that were not actually seated members of the
23 committee. And I would point out that while it is
24 pretty much a expected tradition of the General
25 Assembly that a member of the General Assembly that

1 wants to address a standing committee can certainly do
2 so, I think we actually went above and beyond trying to
3 reassure members that their input or their questions
4 were welcomed whether or not they were a seated member
5 of the committee.

6 REP. BRISSON: Thank you, Representative Lewis.
7 Mr. Speaker, can I speak on the bill?

8 SPEAKER MOORE: The gentleman has the floor to
9 debate the bill.

10 REP. BRISSON: Thank you, Mr. Speaker. Ladies
11 and gentlemen, I just -- and I know that we have ended
12 up with less split counties, divided counties, which is
13 great. But I just want to remind this body that with
14 small populated counties, and I represent -- two out of
15 three that I represent are kind of considered small
16 population -- any time that the smaller counties have
17 to be divided, it does make a big difference to the
18 people. Maybe not statewide concerns, but the
19 general -- people in general in small populations, they
20 feel like divided, when you divide them, they are not
21 whole. And we don't get a whole lot of recognition
22 with the small population to begin with. We don't feel
23 that maybe our word is not heard. Our message is not
24 heard quite as well as the larger counties populated.
25 But when you divide us in half or take a third of our

1 folks, it does have the people concerned that maybe we
2 don't end up with the representation in Congress or
3 wherever it be. And that is my concern and it is all
4 about the small populated. Anytime that we can do
5 anything to help those situations, I hope that we will
6 certainly consider that. Thank you so much, Mr.
7 Speaker.

8 SPEAKER MOORE: For what purpose does the
9 gentleman from Wake, Rep. Martin, arise?

10 REP. MARTIN: To see if the gentleman from
11 Harnett would yield to a few questions.

12 SPEAKER MOORE: Does the gentleman from
13 Harnett, Representative Lewis, yield to the gentleman
14 from Wake?

15 REP. LEWIS: I yield, Mr. Speaker.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker, and thank
18 you, Representative Lewis. I was in attendance in the
19 committees and tried to pay attention to the questions
20 that were asked. Unfortunately, I made the mistake of
21 the sitting next to Representative Torbett, and we were
22 cutting up in class a little bit. So, Representative
23 Lewis, I may repeat some of the questions that you have
24 already attempted to answer and for that I apologize,
25 but blame Representative Torbett for that.

1 Mr. Speaker, the first question I would ask the
2 gentleman from Harnett is regarding Dr. Hofeller who I
3 believe he said was the map drawer. And my question
4 is, was Dr. Hofeller paid for his services with public
5 funds? And if so, how much did he receive in public
6 money?

7 REP. LEWIS: Thank you for that question,
8 Representative. Dr. Hofeller has not, to my knowledge,
9 invoiced the state yet. I do anticipate that he will.
10 I don't have access to that at the moment. It
11 certainly would not exceed the 25,000 that was
12 authorized to Chairman Rucho and myself on behalf of
13 the Republicans and the 25,000 that was authorized to
14 the Democrats to be able to produce the maps. But I
15 don't have an exact figure. I'm sorry.

16 REP. MARTIN: Thank you, sir. Mr. Speaker, to
17 ask another question of the gentleman.

18 SPEAKER MOORE: Does the gentleman from Harnett
19 yield to an additional question from the gentleman from
20 Wake?

21 REP. LEWIS: I yield.

22 SPEAKER MOORE: He yields.

23 REP. MARTIN: Thank you, Mr. Speaker. Thank
24 you, Representative Lewis. Representative Lewis has
25 been quite up front that this is an attempt to get ten

1 seats for Republicans and three for Democrats and that
2 this has partisan purposes. So my question to the
3 gentleman from Harnett is, is this essentially a
4 partisan gerrymander?

5 REP. LEWIS: Well, thank you for that question,
6 Representative. To be clear, the map that you have
7 before you was drawn using criteria that was openly
8 debated and adopted by the Joint Redistricting
9 Committee. Those factors that went into this were of
10 course the requirement to have equal population,
11 contiguity. Political data did play a part in drawing
12 the map. We did seek partisan advantage in drawing the
13 map. We did seek to eliminate the shape of the 12th
14 Congressional District. We did strive for compactness,
15 a lot to what Representative Brisson was just referring
16 to, trying not to split the smaller rural counties if
17 we could. And we considered incumbency. So, as I said
18 earlier in the committee, when a partisan such as you
19 or I look at a political map, some of us see an evil
20 sinister gerrymander if it doesn't meet the objectives
21 that we would like for it to meet. And some see it as
22 a work of art or a work of good public policy. So I
23 would submit to you that the map was drawn based on the
24 criteria adopted by the committee, and is, in fact,
25 good public policy.

1 REP. MARTIN: Thank you, Representative Lewis.
2 And, Mr. Speaker, to see if the gentleman would yield
3 to another question.

4 SPEAKER MOORE: Does the gentleman from Harnett
5 yield to an additional question from the gentleman from
6 Wake?

7 REP. LEWIS: I yield.

8 SPEAKER MOORE: He yields.

9 REP. MARTIN: And I apologize, Mr. Speaker, you
10 can rule me out of order pretty quickly, but a slight
11 editorial comment. Representative Lewis and I are both
12 fathers, and I will note that when our babies made
13 their first production in their diaper, we think it is
14 beautiful also. And I will withdraw that, and with it,
15 an apology.

16 Representative Lewis, the next question I would
17 have for you is do you believe that a partisan
18 gerrymander -- that -- I will restate that. That a
19 plan that would elect ten Republicans and three
20 Democrats in a state that is much more evenly divided
21 in electorates would violate the U.S. Constitution or
22 our State Constitution?

23 REP. LEWIS: Thank you for that question,
24 Representative. To be clear, when I went through the
25 criteria earlier, we did not look at political

1 registration because we believe that election results,
2 election outcome are much better predictors of how the
3 people actually vote than partisan registration is. I
4 mean, you and I have had conversations in the past
5 about the continued growth of the total percentage of
6 voters that choose to list themselves as unaffiliated.
7 We have talked about that in the past. So we believe
8 that we looked at the political results of past
9 elections and have been able to produce a map that will
10 still require the political parties or the individual
11 seeking to be elected within those districts to offer a
12 good solid candidate who can appeal to their base, be
13 it Democrat or Republican, but also be able to appeal
14 to the ever-growing unaffiliated. So, we believe that
15 while -- and I freely acknowledge that I sought
16 partisan advantage as based on the criteria in drawing
17 this map. We do believe that the map has been drawn in
18 a fair and open attempt to comply with the court
19 ruling.

20 REP. MARTIN: Mr. Speaker, to see if the
21 gentleman would yield to another question.

22 SPEAKER MOORE: Does the gentleman from Harnett
23 yield to an additional question from the gentleman from
24 Wake?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. MARTIN: Thank you, sir. Representative
3 Lewis, my question actually is intended to get more at
4 the issue not of partisan registration but actual
5 election results, and more specifically, election
6 results in congressional elections since we are talking
7 about congressional districts here. So my question is,
8 do you believe that it is constitutional under the
9 federal and the state constitutions to draw a plan, to
10 have a plan that elects ten Republicans and three
11 Democrats where election results of the past several
12 cycles are much more -- would suggest a much more --
13 are much closer than a ten to three margin?

14 REP. LEWIS: Thank you for that question,
15 Representative. And let me try to answer it a
16 different way. But for the criteria adopted by the
17 committee which instructed the map drawers to do
18 certain things like try to maintain compactness, try to
19 make, you know -- take incumbency into account, try to
20 make the districts look more compact, be more compact,
21 keep more counties compact, we could have been much
22 more aggressive partisan-wise trying to obtain a map
23 that would elect 11 Republicans. But you can't really
24 do that if you simply consider partisanship as a part
25 of the criteria adopted by the committee, which is what

1 we did.

2 REP. MARTIN: Mr. Speaker, to see if the
3 gentleman would yield to another question.

4 SPEAKER MOORE: Does the gentleman from Harnett
5 yield to an additional question from the gentleman from
6 Wake?

7 Actually before the gentleman does -- before
8 these students leave, the students up on the right, the
9 Chair wanted to recognize a group of elementary
10 students from Easley Elementary School in Durham.
11 Would you all please stand so that we can welcome you
12 and thank you for being with us today. From Durham
13 your representatives are Representative Hall,
14 Representative Michaux, I believe Representative Meyer
15 has part of Durham. Am I missing anybody?

16 REP. MICHAUX: Luebke.

17 SPEAKER MOORE: Representative Luebke is not
18 here, I don't think. So those are your representatives
19 also. Thanks for being with us today.

20 Sorry for the interruption. I believe the
21 gentleman from Wake was stating a question at this
22 point. The gentleman from Wake has the floor to
23 continue propounding the question to the gentleman from
24 Harnett.

25 REP. MARTIN: Thank you very much, Mr. Speaker.

1 Representative Lewis, the question I'm going to ask is
2 an attempt to restate the question I've previously
3 asked, and the fault is all with me for not stating it
4 clearly. You've produced a district with ten
5 Republicans, likely to elect ten Republicans and three
6 Democrats. You stated, I think, just stated that you
7 could have even done 11 Republicans and two Democrats,
8 and I am trying to understand and get an answer from
9 you as to whether or not you think that the plan you
10 have now with the partisan result it has, in light of
11 congressional election results of North Carolina, is
12 constitutional?

13 REP. LEWIS: Representative, thank you for that
14 question. As -- and I'm not trying to sound like a
15 broken record. I know that you're an attorney. I'm
16 not. I will tell you that the committee adopted
17 criteria, one of which was to seek partisan advantage
18 for the Republicans. Now, if you ask me personally if
19 I think that is a good thing, I will tell you I do. I
20 think you are a great man. I think you are a fine
21 public servant. I think electing Republicans is better
22 than electing Democrats. So I drew this map in a way
23 to help foster what I think is better for the country.

24 REP. MARTIN: Mr. Speaker, to see if the
25 gentleman would yield to another question.

1 SPEAKER MOORE: Does the gentleman from Harnett
2 yield to an additional question from the gentleman from
3 Wake?

4 REP. LEWIS: I yield.

5 SPEAKER MOORE: He yields.

6 REP. MARTIN: Thank you, Mr. Speaker. And let
7 me add for the record that I think the gentleman from
8 Harnett is a fine public servant also with the interest
9 in the public at heart, and to boot, he has wonderful
10 hair also.

11 Mr. Speaker and members, I do feel that we have
12 a tendency to treat questioning on the floor of the
13 General Assembly like a cross-examination. We've heard
14 the adage, physician heal thyself. I think in this
15 case lawyer heal thyself is appropriate. So I don't
16 want to turn this into a cross-examination, but I've
17 tried to answer the question about his opinion on the
18 constitutionality of a partisan gerrymander. I don't
19 think it has been answered, but to avoid this from
20 turning into cross-examination, I would like to move on
21 to another question. And that question is, Dr.
22 Hofeller and anyone else involved in the map drawing,
23 what data did they use to meet your stated criteria of
24 attempting to get a ten to three Republican advantage?

25 REP. LEWIS: Well, thank you for that question,

1 Representative. On every member's desk and also before
2 every member in the committee, the Joint Committee, the
3 Committee in the Senate, and the Committee in the
4 House, is a stat pack, if you will, that lists a
5 variety of races that over 2008, 2010, and 2014, we
6 list out all of the political contests that were used.
7 I'll be happy, if you would like me to, to let you know
8 which ones they were, but I think it's pretty clear to
9 the members and on the record which political contests
10 we used. Just real quick, Attorney General 2008,
11 Commissioner of Agriculture 2008, you know, in fact --
12 yeah, I mean, we used a variety of political contests
13 from 2008 through 2014, all of which we provided to the
14 members on their desk.

15 REP. MARTIN: Mr. Speaker, to see if the
16 gentleman would yield to another question.

17 SPEAKER MOORE: Does the gentleman from Harnett
18 yield to an additional question from the gentleman from
19 Wake?

20 REP. LEWIS: Yes, sir, I yield.

21 SPEAKER MOORE: He yields.

22 REP. MARTIN: Thank you, Mr. Speaker. And Mr.
23 Speaker, the gentleman from Harnett has been most
24 gracious with his time in committee, in several
25 committee meetings over going through the lists and

1 explaining what the races are and what the codes meant.

2 But I do want to ask just a couple of clarifying

3 questions on that if I could. Representative Lewis,

4 would it be accurate to say that the mapmakers

5 considered every one of the races that's listed in the

6 charts that were presented at committee several times.

7 REP. LEWIS: Yes, sir.

8 REP. MARTIN: And another question, Mr.

9 Speaker.

10 SPEAKER MOORE: Does the gentleman wish to ask
11 an additional question?

12 REP. MARTIN: Yes, sir.

13 SPEAKER MOORE: And does the gentleman from
14 Harnett yield to an additional question?

15 REP. LEWIS: Yes, sir.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker. And,
18 Representative Lewis, are there any races that are not
19 listed on these charts that the mapmakers considered?

20 REP. LEWIS: No, sir.

21 REP. MARTIN: Mr. Speaker, to see if the
22 gentleman would yield to another question.

23 SPEAKER MOORE: Does the gentleman yield to an
24 additional question?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. MARTIN: Thank you, Mr. Speaker. Thank
3 you, Representative Lewis. In looking at those
4 different races, did you weigh, for example, the
5 results in lieutenant gubernatorial elections equally
6 with those of say a gubernatorial election?

7 REP. LEWIS: Thank you for that question,
8 Representative. I think it is important to understand,
9 the races that we used were statewide. We were trying
10 to get, you know, the broadest swath of data that would
11 apply equally in every district. I've had a couple of
12 members say, well, why didn't you look at the race for
13 Congress and whatnot, and it was just too hard to
14 figure out how the data -- you know, for districts that
15 have changed over time would work. So in terms of did
16 we weigh them equally, to be candid with you, I think
17 that those of us that spend way too much time in
18 politics know that certain races, maybe weren't as
19 equal as they should be because one party or the other
20 either had a nonincumbent candidate that was trying to
21 seek the office, which we believe -- you know, I'm sure
22 you would agree, that most of the time, most the time
23 incumbency is an advantage. Sometimes it might have
24 been an underfunded campaign. So we looked at all of
25 them, but, no, my gut would tell me that I would gain

1 more or garner more by looking at the Governor's
2 results than I would the Lieutenant Governor's results
3 and so on. But we looked at all of them and tried to
4 blend the results. I mean, you know, frankly they
5 don't always come up like we want them to. The
6 Attorney General, the Democratic nominee for AG has won
7 in all 13 of these. So certainly the strength of the
8 candidate, if that is what you're trying to ask,
9 certainly that matters.

10 REP. MARTIN: Mr. Speaker, to see if the
11 gentleman would yield to another question.

12 SPEAKER MOORE: Does the gentleman from Harnett
13 yield to an additional question from the gentleman from
14 Wake?

15 REP. LEWIS: I yield. Yes, sir.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker. I would
18 like to thank the gentleman from Harnett for his
19 patience also.

20 SPEAKER MOORE: Representative Martin, I
21 apologize, the gentleman's time has expired. The Chair
22 will, however, at the Chair's discretion will allow the
23 gentleman to ask one additional question.

24 REP. MARTIN: I would be happy to yield in my
25 time if that is permissible under the rules because

1 this is my fault.

2 SPEAKER MOORE: It is actually the gentleman's
3 time spending to ask the question. But the Chair will
4 give the gentleman one additional question.

5 REP. MARTIN: Thank you, Mr. Speaker.
6 Representative Lewis, the question I would ask is, do
7 you believe under these maps that African American
8 voters have a reasonable opportunity to elect a
9 candidate of their choice in any of the districts
10 you've drawn? And if so, which of those districts do
11 they have such an opportunity? And if so, how did you
12 determine that?

13 REP. LEWIS: Thank you for that question,
14 Representative. As I've said before, the criteria that
15 we used in drawing these maps has been spelled out.
16 One of those criteria was not race. Race was not
17 considered in the drawing of these maps. I do not know
18 what the racial composition of the voters that reside
19 in these districts is. So I don't feel that is a
20 question that I can give a direct answer to as race was
21 not among the criteria considered when we drew these
22 maps, based on our understanding of the Harris case,
23 which said that racially polarized voting did not
24 exist. Thank you.

25 SPEAKER MOORE: And, Representative Martin,

1 should the gentleman wish additional questions, the
2 gentleman will be recognized a second time for that in
3 just a bit if the gentleman so desires.

4 For what purpose does the lady from Buncombe,
5 Representative Fisher, arise?

6 REP. FISHER: To ask a question of the bill
7 sponsor, please.

8 SPEAKER MOORE: Does the gentleman from Harnett
9 yield to the lady from Buncombe?

10 REP. LEWIS: Yes, sir. I yield.

11 SPEAKER MOORE: He yields.

12 REP. FISHER: Take a breath, Representative. I
13 know you've been on the spot for a little while, but I
14 appreciate your taking a moment to answer. I had a
15 concern passed along to me and because it happens to
16 deal with my district, which I thought was kind of
17 unusual because I thought that this was only going to
18 deal with a couple of congressional districts, but it
19 seems like it is stretching even further west. Can you
20 tell me why, for example, Calvary Baptist Church area
21 on Haywood Road in West Asheville might have been moved
22 from the 10th to the 11th district?

23 REP. LEWIS: Thank you for the question,
24 Representative. And sadly, while I know you represent
25 one of the most beautiful parts of our state, I am not

1 immediately familiar with the church that you
2 referenced. I will tell you that the changes that were
3 made in Buncombe County were to equalize population
4 that had been moved around because other districts were
5 redrawn.

6 REP. FISHER: A follow-up.

7 SPEAKER MOORE: Does the gentleman from Harnett
8 yield to an additional question from the lady from
9 Buncombe?

10 REP. LEWIS: Yes, sir. I yield.

11 SPEAKER MOORE: He yields.

12 REP. FISHER: And I think then from your
13 answer -- from your previous answer, that I can assume
14 that the same would be true for having moved part of
15 Biltmore Forest in Asheville to the 11th, east of
16 Sweeten Creek Road, from the 11th to the 10th. And
17 then an area of North Asheville in Woodfin from the
18 10th to the 11th; am I assuming correctly?

19 REP. LEWIS: Thank you for the question,
20 Representative. The reason that we would have divided
21 counties would have been one of the criteria that was
22 listed earlier and considered by the committee. I have
23 a map on my desk that shows only whole VTDs of Buncombe
24 County. I'm afraid I just don't know -- my wife
25 actually fussed at me because I've been gone for two

1 weeks doing this. She would like to go to Grove Park
2 this weekend. So maybe I could visit Biltmore Forest
3 when I'm there, but I don't that we're going to be able
4 to make it.

5 REP. FISHER: Well, I hope you'll be able to.
6 There's a great Arts and Crafts Mission Furniture
7 Conference going on there right now that my daughter
8 helped plan. But I think --

9 SPEAKER MOORE: Does the lady wish to ask an
10 additional question?

11 REP. FISHER: I would like to speak on the bill
12 for just briefly, Mr. Speaker.

13 SPEAKER MOORE: The lady is recognized to
14 debate the bill and to do a public service announcement
15 for Asheville as well.

16 REP. FISHER: Sure, I can do an advertisement
17 anytime. I'm very proud of my town. I appreciate the
18 representative taking the time to try to address my
19 questions. But the point, I guess, I would like to
20 make in having asked the questions in the first place
21 is that we are, again, embarking on an exercise that
22 will further confuse the voters. I know from having
23 listened to the four or so hours of the public hearing
24 that we had several examples of people who have gone to
25 their polling places, filled out their ballot, only to

1 find out that they didn't know who their congressperson
2 was. So they were surprised to see either one name or
3 another on their ballot. They thought that this person
4 was their Congressperson, but it turns out it was
5 somebody else. And I would just caution us that if
6 we're going to have to do this, there needs to be some
7 way, some efficient way, to educate the voters about
8 the changes that are being made. And try to make it
9 easier for them to do what is their right to do, which
10 is exercise their vote. So, I just felt it important
11 to make the body aware, or again aware, of how
12 difficult this whole thing is making it for the voters
13 in North Carolina. Thank you, Mr. Speaker.

14 SPEAKER MOORE: Members, I hope you'll join me
15 in welcoming, we have another school group with us
16 today. We have students from the Longleaf School of
17 the Arts here in Raleigh with us. If you all would
18 please stand and let us welcome you. Thank you for
19 being with us today.

20 For what purpose does the lady from Wilson,
21 Representative Farmer-Butterfield, arise?

22 REP. FARMER-BUTTERFIELD: To speak on the bill.

23 SPEAKER MOORE: The lady has the floor to
24 debate the bill.

25 REP. FARMER-BUTTERFIELD: Thank you,

1 Mr. Speaker. I feel compelled to speak on this as an
2 African American. If I think about redistricting for
3 me in my district, I went from Wilson and Edgecombe to
4 Wilson and Pitt. My constituents from Edgecombe and
5 Wilson were reluctant about the change in terms of
6 redistricting as it related to my having Pitt County.
7 But if I look back, I am happy with Pitt County and I
8 consider it a blessing that I was able to move from
9 Wilson, Edgecombe with experience and represent the
10 economic engine of the East in Pitt County.

11 So today in looking at the congressional
12 districts, I want to talk about the process. Public
13 hearings were convened before the release of draft maps
14 for the public to view. Was that really cost efficient
15 and necessary? Nothing was available for the public to
16 respond to. Why would we do that? Let's talk about
17 moving from one extreme to the other. In drawing the
18 initial maps, we went from African Americans exceeding
19 50 percent in those districts, the two key districts
20 that we're talking about that have been changed. Now,
21 we are looking at no consideration at all for race.
22 It's overreaching in that the maps guarantee election
23 of ten Republicans and three Democrats so is said.
24 Democrats are 43 percent of the voters in this state
25 and only given an opportunity for three districts for

1 Congress doesn't seem balanced at all. In fact, one of
2 the districts that was recently drawn, we were told
3 that it was leaning Republican. What about
4 legislators, are they required to protect minority
5 communities from racially polarized voting patterns?
6 Yes, they are. Voter discrimination matters. If,
7 indeed, public hearings mattered and the input of
8 African Americans had been taken into consideration,
9 perhaps we would not be in this position we are in
10 today. In fact, I know we would not be in the position
11 we are in today.

12 Finally, when the leadership was asked in
13 committee this morning if the map was drawn prior to
14 the public hearings held on Monday and prior to the
15 criterion being decided on Tuesday the response was, I
16 can't say. So given all of these factors I share with
17 you, I ask that you vote against these maps that have
18 been redrawn. Thank you.

19 SPEAKER MOORE: For what purpose does the
20 gentleman from Forsyth, Representative Hanes, arise?

21 REP. HANES: To ask the bill sponsor a question
22 and to speak on the bill.

23 SPEAKER MOORE: Does the gentleman from Harnett
24 yield to the gentleman from Forsyth?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. HANES: Representative Lewis, let's talk
3 about race for just a second, and some of the
4 representatives here know that I like this
5 conversation. And I fashion myself as a person who can
6 do it -- talk about race without getting racial. So I
7 want to ask you a question, and it is a little nuanced
8 from the questions that have been asked to you
9 regarding race this morning. Representative Lewis,
10 does race impact the maps that have been drawn? The
11 question is not did you consider race, but does race
12 impact the maps that have been drawn?

13 REP. LEWIS: Thank you for the question,
14 Representative. All I can tell you is that race was
15 not a consideration when the maps were drawn. I am
16 not, to be candid with you, sure I truly understand the
17 nature of the nuanced question.

18 REP. HANES: Okay. Okay. Thank you.
19 Mr. Speaker, to speak on the bill, please.

20 SPEAKER MOORE: The gentleman from Forsyth has
21 the floor to debate the bill.

22 REP. HANES: So, ladies and gentlemen, let's
23 have a brief conversation about race, and it goes all
24 of the way back to the beginning. So as you know, in
25 the beginning God created heaven and earth. He created

1 man and woman and said, this is good. And then he
2 created America, and he said, I like that too. And
3 then black folk and white folk got together in a most
4 disagreeable one-sided contract negotiation. And I can
5 assure you that both black folk and white folk got to
6 America on a boat. Okay? And over the years black
7 folk, my folks, continued to have disagreement about
8 this contract that we got brought into here. And over
9 the years we got our freedom. Representative Michaux
10 was elected to the House of Representatives, and here
11 we are today talking about race and elections.

12 The question I asked was, does race impact this
13 map? That is either directly or indirectly. And the
14 answer is, of course it does; of course it does. What
15 we have here is we have Democrats submerged in majority
16 Republican districts, ten of them, and Republicans
17 submerged in majority Democratic districts, three of
18 them. Of course, it matters. If you look at the
19 numbers for the state, there are 1.9 million
20 Republicans; 95 percent of them are white. The
21 2.6 million Democrats; 41 percent of them are black.
22 So saying in some way that we did not use race is
23 frankly just simple subterfuge toward achieving a
24 broader goal. And that is a goal that was admitted
25 during our committee, and that goal was the maintenance

1 of districts that disenfranchise Democrats. And in
2 many ways, whether that is intentional or not, those
3 districts silenced the voices of people who look like
4 me.

5 Two of the largest minority populations in this
6 state, Forsyth and Guilford County, have been silenced
7 with regard to congressional politics. We could have
8 gone nine to four, with a district there in the Triad
9 maintained Representative Alma Adams, and we could have
10 achieved this goal of eliminating the serpentine
11 districts, as we've called them, of the 12th district.
12 And we could have been gone away from here hours ago.
13 We chose not to do that, and we continue to think about
14 these maps as not impacting race.

15 Let me just make one more statement, and it is
16 from a op-ed I wrote in the Winston-Salem Chronicle
17 this week. And I want to read for you the last
18 paragraph of that statement as it regards to how we
19 need to think about and how race actually does matter,
20 you know, for us. I said, "Black people are, in fact,
21 people and should be counted in the whole! Our lives,
22 our voices, and our votes matter from Murphy to Manteo.
23 We are part of the fabric of North Carolina and have
24 earned our right to representation through
25 constitutionally consistent districts in every corner

1 of this state. We paid for that right by whip, through
2 blood, by protest, and through eventual freedom. It is
3 never the wrong time to do the right thing." Thank
4 you.

5 SPEAKER MOORE: For what purpose does the
6 gentleman from Rockingham, Representative Jones, arise?

7 REP. JONES: To debate the bill.

8 SPEAKER MOORE: The gentleman has the floor to
9 debate the bill.

10 REP. JONES: Thank you, Mr. Speaker. Ladies
11 and gentlemen of the House, I have to say that I have
12 been quite fascinated with so many aspects of this
13 debate, and discussion throughout the committee process
14 and today on the floor, and I just want to speak to
15 that a little bit. You know, as someone who has lived
16 in the state of North Carolina for all of my life and
17 has been kind of a student of election history over the
18 past few decades in particular, I continue to be quite
19 fascinated and have really enjoyed this conversation,
20 particularly when we have heard about gerrymandering.
21 And I think it behooves us a little bit to consider
22 maybe a little trip down memory lane when we think
23 about gerrymandering. Because, quite frankly, I'm not
24 sure that a lot of people knew that the word was
25 invented until Republicans took the majority in 2010.

1 I never really heard it reported on very much through
2 the media. I never heard it spoken about in the
3 General Assembly. I thought it was fascinating as we
4 were in committee this week as we saw the maps up on
5 the wall that went all the way back to 1992 at least.
6 I also happen to recall a time that the state
7 legislature looked very different than it does today.
8 And, you know, there was no stone unturned. We
9 remember a time of single-member districts and
10 two-member districts and three-member districts and
11 four-member districts. You know, whatever it took to
12 keep the majority in the time at the majority that
13 seemed to be fine. And so a lot of the voices that I
14 hear today representing the minority party that used to
15 be in the majority, I have to wonder, you know, where
16 were those voices in the Democratic Party for decades
17 and decades and decades?

18 You know, I've heard it also a lot of
19 complaining about the fact that there are ten
20 Republican congressman and three Democrats. That there
21 currently are and that these maps as, Representative
22 Lewis has been very candid and transparent and honest,
23 something that I for one greatly appreciate, and
24 would've greatly appreciated that conversation over the
25 decades. So thank you, Representative Lewis, for your

1 honesty and integrity and transparency in coming right
2 out and saying that, yes, I do believe as we adopted in
3 the committee that there was an attempt made at that
4 partisan advantage. And I keep hearing the complaints
5 from the other side that enjoyed that partisan
6 advantage because of gerrymandering for so many
7 decades.

8 I would just remind the members of this body
9 that if you look over the last 40 years and see how
10 North Carolinians have voted consistently in federal
11 races, I would remind you that in eight of the last
12 nine presidential elections, they have voted
13 Republican. That is 89 percent of the time. And I
14 would remind you that you may not know that in the last
15 16 United States Senate races in North Carolina, 13 of
16 those races went Republican. That was 81 percent of
17 the time. So to me, I don't see a problem in thinking
18 that if you have ten Republicans and three Democrats,
19 which is 77 percent, you might could make the argument
20 that Republicans are underrepresented. But the point
21 of the matter is these maps are not your problem. The
22 problem is that your national party has left the values
23 of the majority of the people in North Carolina. And I
24 would take you back to the 2010 election of the
25 legislature when this Republican majority gained its

1 majority by 16 votes. Those were under maps that the
2 Democrats drew. And fortunately, we had court cases
3 over the years that eliminated the two and three and
4 four-member districts, and we have the pod system now
5 where you can't just divide counties wherever. But I
6 would just remind the listeners and the voters and the
7 students from North Carolina to study your history and
8 to understand when you hear all these comments and all
9 these complaints about gerrymandering, well, we sat at
10 the master's feet for decades and perhaps some people
11 learned something. But I would suggest that they are
12 fair. Okay? I understand the Democrats don't like it.
13 The Republicans didn't like the map for decades, but
14 they are fair, they are legal, and they are by the
15 rules.

16 And finally, ladies and gentlemen, I would not
17 accept that Democrats cannot be elected in these
18 districts. If you look at the voting data before you,
19 for instance, we mentioned this in committee, the 2008
20 election for the Attorney General, the Democrat won 13
21 out of 13 of these congressional districts. You go
22 down the line, the State Auditor, the Democrat won 9 of
23 13 of these districts. I believe the Commissioner of
24 Insurance won a majority of these districts. And so,
25 ladies and gentlemen, I would submit that the people of

1 North Carolina are not robots. They have the perfect
2 opportunity to elect the candidate of their choice, and
3 they can and they do cross party lines whenever they
4 feel it necessary. They look at the candidates. And
5 so I would suggest that we trust the voters of North
6 Carolina to go out there and make their choice.
7 Recognize that we are putting forward fair and legal
8 maps based on what the courts have directed us to do,
9 and I commend, for one, the people who have worked
10 very, very hard. I want to mention once again the
11 staff that has worked hard, the people that have worked
12 hard to put this forward. We have been given a very
13 difficult task in a very short period of time, and I
14 think we should be proud of the process and the
15 results. Thank you, Mr. Speaker.

16 SPEAKER MOORE: For what purpose does the
17 gentleman from Cumberland, Representative Floyd, arise?

18 REP. FLOYD: Inquiry, with the Chair.

19 SPEAKER MOORE: The gentleman may state his
20 inquiry.

21 REP. FLOYD: It is a very simple inquiry, Mr.
22 Chair. Are we going to meet the 5:00 deadline?

23 SPEAKER MOORE: One way or another.

24 For what purpose does the gentleman from
25 Haywood, Representative Queen, arise?

1 REP. QUEEN: To speak on the bill.

2 SPEAKER MOORE: The gentleman has the floor to
3 debate the bill.

4 REP. QUEEN: You know, we have heard a lot of
5 good points being made, but whenever your criteria is
6 for political advantage, this General Assembly is
7 disenfranchising voters. Where politicians get to
8 select their voters versus voters selecting their
9 politicians, something is awry.

10 Now, Representative Jones was talking about
11 history and the 2010 election was a historic one
12 because it was the first election since Citizens United
13 was passed, and there was about \$20 million that was
14 never in our elections that swung a lot of them. I was
15 in that election, and I experienced that tsunami of
16 outside money. So things have historically affected
17 races, but for this body to work on a bill that
18 basically empowers the politicians, not the citizens,
19 for the vote when the absolute foundation of our system
20 is one vote per citizen and every vote is equal. I
21 think if there was a -- or I will just -- I'll say, how
22 does -- whenever you do that, whenever you gerrymander
23 in a manner that we are speaking and in the manner it
24 was done after the last census by this body, how does
25 that affect the voters' trust in the system? Will

1 their vote count equally or have they been
2 disenfranchised by the drawing of the district that
3 they live in where their vote really won't count in
4 that particular district? And one of the things that
5 I'll use as a data point on that is registered voters
6 self-identify themselves in this state, over
7 2.76 million Democrats and 2.01 million Republicans.
8 The democrats self-identify, but they are
9 disenfranchised in many of their districts by the
10 gerrymandering that has gone on. If we want to make
11 voting a truthful one vote per person, we need to
12 recognize every vote should count equally. I don't
13 think we're doing that here. I think it is clearly the
14 criteria that has been stated, been stated quite
15 clearly that that's not what we're doing, but that is
16 what we should be doing. So that's that point. The
17 second one is, in my region I would contend the
18 criteria that should be in addition to one vote per
19 citizen and every vote counts equally, that should be
20 certainly the criteria, the first one. The second one
21 is communities of interest should be contained in this
22 compactness. And I live in the mountains, as you all
23 know, and we have one urban core, one city, Asheville,
24 a wonderful city, that has been the center of our
25 mountain region since our state was founded. It has

1 grown to be a fabulous center. Well, the
2 gerrymandering last time that the courts have thrown
3 out -- or -- has taken our urban core away from our
4 region. So our congressman does not have the city of
5 his region in his district. So whether he's a Charles
6 Taylor or Heath Shuler, he's Democrat or Republican,
7 because you know the 11th district has flipped back and
8 forth for decades, but we always had a unified district
9 with our urban core in it. But for complete political
10 advantage, our congressional district has been neutered
11 from its urban core, and we all know that the urban
12 cores drive the economics of regions. So for these two
13 reasons I think this is a very unfortunate bill because
14 neither of these important issues, communities of
15 interest and one vote per citizen, are embodied in the
16 criteria that have been used to draw it. Thank you.

17 REP. STAM: Mr. Speaker.

18 SPEAKER MOORE: For what purpose does the
19 gentleman from Wake, Representative Stam, arise?

20 REP. STAM: Would Representative Queen yield
21 for one question?

22 SPEAKER MOORE: Does the gentleman from Haywood
23 yield to the gentleman from Wake?

24 REP. QUEEN: I will.

25 SPEAKER MOORE: He yields.

1 REP. STAM: Representative Queen, I chaired our
2 State Platform Committee for a few years; it's
3 available. Have you ever thought of maybe changing the
4 policies and platform of your party so that you would
5 attract voters?

6 REP. QUEEN: I try to speak to the needs of the
7 citizens in this state every day, Representative Stam.

8 SPEAKER MOORE: For what purpose does the
9 gentleman from Wake, Representative Martin, arise?

10 REP. MARTIN: Mr. Speaker, I think to speak a
11 second time.

12 SPEAKER MOORE: The gentleman is recognized to
13 speak on the bill a second time.

14 REP. MARTIN: Thank you very much, Mr. Speaker.
15 Members, I'll leave the gentleman from Harnett alone
16 now. He was good to indulge me in a long series of
17 questions. But I do want to respond to a couple of
18 statements that were made both in the course of this
19 debate and throughout the committee debate and also to
20 the press.

21 There has been a contention made somehow that
22 Democrats failed to participate in this process, that
23 we offered no alternatives, and nothing could be
24 further from the truth. We offered several
25 amendments -- which I think I'm correct in saying that

1 the record will show were opposed by every single
2 Republican member of the committees. In those
3 committees the Democratic members of the committee told
4 you that you needed to draw districts that gave
5 minority voters the opportunity to elect candidates of
6 their choice, that you have said that you refuse to
7 even consider that data. The Democratic members of
8 these committees told you that they thought it was
9 important to keep Representative Alma Adams, a highly
10 capable minority member of the North Carolina
11 Congressional Delegation, a district in which she has a
12 hope of getting reelected, but you declined to
13 incorporate that request. We told you that it is
14 important to consider one of the basic principles of
15 redistricting, communities of interest, which you heard
16 the gentleman from Bladen, Representative Brisson, I
17 think elude to in his comments and also the gentleman
18 from Forsyth, Representative Hanes, talk about also.
19 But you declined to incorporate that input. And
20 without a doubt, we told you that we did not want to
21 see a partisan gerrymander. Yet you shamelessly and
22 proudly got up and proclaimed that that was exactly
23 what you were going to do. We participated in full;
24 you just chose to ignore our participation. Anyone who
25 says differently is selling something.

1 The gentleman from Rockingham, Representative
2 Jones, also talked about the importance of history, and
3 any Democrat that gets up and tells you that Democrats
4 have not participated in partisan gerrymandering
5 doesn't know what they're talking about and is paying
6 no attention to history. But that's a very 20th
7 Century way of looking at things, and it is not what
8 the public in North Carolina in the 21st Century wants
9 to hear. Folks, people are turning away from your
10 party and mine.

11 Representative Stam's comment about platforms
12 and so forth was from out of nowhere. Democrats have
13 had success in elections as much as Republicans. I
14 think the statistics show and the consensus is we are a
15 purple state now, but in the end, we are a state that
16 is losing a partisan flavor because voters are turning
17 away in droves from you and us. The leading candidate
18 right now for your presidential nomination is a guy who
19 gave significant amounts of money to Hillary Clinton,
20 the leading candidate for my party's nomination. The
21 other leading candidate for my party's nomination is a
22 senator who was unaffiliated until 2015. That should
23 tell both of our parties something. We ignore what the
24 voters are telling us at our peril. They do not want
25 to see partisan gerrymanderers like what the Democrats

1 used to do and what the Republicans are doing now.

2 Now, I was not here the last time Democrats
3 drew statewide districts, but I was here and
4 participated significantly in drawing the Pender and
5 New Hanover districts, which were ordered by the
6 courts. That district came into my committee with a
7 two to one Republican advantage, and it left with a two
8 to one Republican advantage. There was probably no way
9 for us to screw with the partisan mixture of that, but
10 we didn't. And it left -- I think it is safe to say,
11 with the two Republican members from those counties
12 very satisfied with the result. So don't try to lay
13 the guilt of the Democratic party's past on me. I can
14 say that I never have and never will support partisan
15 gerrymandering, and I think it is safe to say that a
16 good number of my colleagues on the other side of the
17 aisle joined me in that also.

18 So folks, let's join together and at least
19 acknowledge that the public does not think that the
20 definition of fair is the childish statement, you did
21 it first. These districts are going to pass just like
22 the gerrymandered districts that Democrats did in the
23 past passed also. I'm under no illusions that we have
24 the ability to stop it. But next time we have the
25 chance to do this, let's find a better way.

1 SPEAKER MOORE: For what purpose does the
2 gentleman from Durham, Representative Michaux, arise?

3 REP. MICHAUX: To ask Representative Lewis a
4 question.

5 SPEAKER MOORE: Does the gentleman from Harnett
6 yield to the gentleman from Durham?

7 REP. LEWIS: I yield.

8 SPEAKER MOORE: He yields.

9 REP. MICHAUX: And, David, honestly, this will
10 be my last question to you. In drawing the maps, was
11 anything made or said or asked to what extent we must
12 preserve the existing minority percentages in order to
13 maintain the minority's present ability to elect its
14 candidate of choice?

15 REP. LEWIS: Representative, thank you for the
16 question. It is my understanding of the Harris
17 decision that they did not find the tests were met that
18 racially polarized voting existed and, as such, we did
19 not consider race in any way when we drew these
20 districts.

21 REP. MICHAUX: Thank you.

22 SPEAKER MOORE: For what purpose does the
23 gentleman from Cumberland, Representative Lucas, arise?

24 REP. LUCAS: To speak briefly on the bill.

25 SPEAKER MOORE: The gentleman has the floor to

1 debate the bill.

2 REP. LUCAS: Thank you, Mr. Speaker. Ladies
3 and gentlemen, I have sat here very attentively as I
4 have contemplated what we are about to do. And that
5 is, we are about to sanction maps that will identify
6 folk who will represent us in the United States
7 Congress. And I would have to say that we should live
8 in a democracy. We do live in a democracy. And when
9 you live in a democracy, our personal feelings and
10 doubts ought to be superseded by what is best for our
11 people. And I'm not so sure that I'm getting that.
12 I've heard some snide snickering. I've heard some
13 snide remarks about, well, you all gerrymandered, so
14 therefore, we're going to do it. Well, if it was wrong
15 then, it is wrong now. Let's do what's right by the
16 people of this great state of North Carolina. They
17 deserve better than this. It is not about partisan
18 bickering. I am saddened to see that we're turning it
19 into that. It should be about who can best do the job
20 for the people of this great state. And people who
21 live in this state, many of them are now saying I don't
22 care whether you are identified as a Democrat or as a
23 Republican. They want to be identified as a citizen,
24 an independent. And they want to have good
25 representation. And that model is trending more and

1 more, and the more we sit here and bicker, the more
2 we're going to see that trend grow.

3 We, last session, I thought were on the right
4 track here in the House when we voted to have an
5 independent commission draw boundary lines, and I
6 thought that was great. I wish that we could get the
7 Senate on board to do the very same thing. That is the
8 most honest and the fairest way to get what we want to
9 have done accomplished. Let's get serious about this;
10 let's stop this partisan bickering; let's move on for
11 the state of North Carolina. Thank you.

12 SPEAKER MOORE: For what purpose does the
13 gentleman from Durham, Representative Hall, arise?

14 REP. L. HALL: To speak on the bill.

15 SPEAKER MOORE: The gentleman has the floor to
16 debate the bill.

17 REP. L. HALL: Thank you, Mr. Speaker. And I
18 want to certainly give thanks to all of those who
19 worked on these maps and have made what I will take to
20 be an effort to satisfy some different interests.

21 I referenced it yesterday when we talked about
22 what we were going to do for voting, and I want to
23 reference it again today because I think we may be
24 missing the boat on this. And I think because you
25 occupy this leadership position and the Court has told

1 you to back and draw these districts, they really
2 weren't saying come back and draw the districts for
3 yourself or to perpetuate your party's power. They
4 were under the impression, and if they didn't
5 explicitly say it, I think they meant to say it, and
6 thought you understood it, that these districts should
7 be drawn for the people of the state of North Carolina.
8 Now we've already heard people talk about the
9 statistics and whether or not there is a certain number
10 of Democrats, a certain number of Republicans and
11 almost a equal number of unaffiliated as there are
12 Republicans, certainly a much larger number of
13 registered Democrats. So we know factually,
14 statistically that is the case. Now that would be
15 turned on the head by the 10-3 districts that we've
16 drawn here now. That is a fact. We can't get around
17 it. And Representative Lewis did say that was his
18 intention, so that has been achieved. So the partisan
19 advantage has been maintained, but not really in
20 compliance with the registered voters of North
21 Carolina.

22 I heard in response to the question about
23 expert map drawers that there was some confusion that
24 maybe the Democrats had authorized or entered into a
25 contract for the person who drew these maps to be paid

1 from the \$25,000 that the committee indicated could be
2 used by Democrats. We did not do that. I hope there
3 is no accounting problem, that someone gets confused
4 and thinks that the \$25,000 that was supposed to be
5 authorized by the committee to Democrats had been
6 waived and authorized to be paid to the person who drew
7 these maps who we don't know how much he charged for
8 them. But we certainly did not -- and under the terms
9 of the committee, I think it says they have to be
10 authorized and released by us. We did not do that, and
11 I just want to make sure that is clear on the record
12 because I heard it stated otherwise.

13 Now, we've ended up with a difference without a
14 distinction here, 10-3, that was our intent to keep it
15 the way it was, and so we understand that. Not maps
16 for the citizens, maps to keep the partisan advantage.
17 And much has been made and I understand it, that the
18 intent was to maintain this partisan advantage. I
19 appreciate those who in this House, and that is one
20 thing we did agree on, at least the majority of us,
21 that we need a Redistricting Committee. A lot of
22 people signed onto that bill that went out of here and
23 voted for it because we recognized we need a
24 Redistricting Committee.

25 We could have tried to do work in the spirit of

1 a redistricting committee, try to draw fair districts
2 for the citizens of North Carolina, try to have
3 communities of interest together so they can be
4 represented effectively and efficiently, and not make a
5 partisan advantage or make an incumbency advantage the
6 priority. We didn't do that.

7 I want to make sure that it is clear on the
8 record as well, and there has been some reference to
9 it, I think Representative Martin who was at the
10 committee meetings when the criteria was adopted. Now,
11 Representative Hagar said that they were working on the
12 maps for two weeks before we came to Raleigh, and that
13 was his statement in the committee. That was before
14 the maps were even issued. So if there was some
15 question of someone saying we can't comment as to
16 whether these maps were drawn before the criteria was
17 established, go back and check the record. That was a
18 statement from Representative Hager, and I believe him
19 to be an honest Representative.

20 The question now is, what happened in the
21 committee? When we adopted the criteria for the maps
22 that were already being drawn or worked on for two
23 weeks. So you wonder, does the criteria come first, or
24 do the maps come first? But at any rate, on the
25 timeline when we went to adopt the criteria, I think

1 Representative Martin already referenced it, and you
2 can go back and check the record. That every
3 Democratic criteria that was put forward was voted down
4 along party lines, every one. Certainly you had a
5 two-thirds one-third majority on the committee, and
6 every one was voted down. I think it is important to
7 note that one of those criteria specifically stated
8 division of counties shall only be made for reasons of
9 equalizing population, preserving communities defined
10 by actual shared interests. That shared interest has
11 been addressed by people already, and some of you I'm
12 sure have districts but are not satisfied because
13 communities of shared interest were not respected. And
14 Representative Brisson was certainly right to bring
15 that forward and ask that question, how did you violate
16 that principle? Well, the answer, again, was, when
17 that request was put forward in committee, it was voted
18 down. And so I take people at their word in what
19 they're saying, but we also can't live in an alternate
20 reality.

21 Race is on the ground in North Carolina based
22 on where we live, based on hundreds of years of
23 history, and Jim Crow laws and slavery and
24 discrimination and redlining. It's there. We see it
25 every day when we drive through communities on our way

1 to Raleigh. We live it every day when we're back home,
2 and it is still there. We talk about it in our
3 university system and other places when we do
4 budgeting. So we see it, and we know it. So to draw
5 this plan and say we don't recognize race in North
6 Carolina, and we recognize the racial impact of the
7 plan. But we won't say the word. We're going to do
8 enough in theory to get by the court order, but we're
9 not going to do enough to do good service to the
10 citizens of North Carolina and respect them I think is
11 a short coming that we could do better. So I hope, as
12 someone has already said, that we'll make sure we get a
13 redistricting commission. We shouldn't have to have
14 this discussion. We should be able to recognize what
15 the composition of the voters of North Carolina is,
16 what they would express, and not hold them back from
17 being able to work together and be effectively
18 represented.

19 I heard, finally, a lot of times throughout the
20 committee discussions sitting there -- and one of the
21 responses continued to be, well, when you were in
22 charge, you did it. Now, I don't remember how many of
23 you remember Sherman and Mr. Peabody when they used to
24 get in the time machine, and they would go back in
25 history and visit all of these different places. Well,

1 the people of North Carolina are trying to go forward,
2 and we continue to talk about rebranding this state and
3 looking at the future. Hopefully, as Representative
4 Jones said, you learn not what to do going forward by
5 the failings of Democratic redistricting efforts. You
6 should have learned what not to do going forward in
7 redistricting. And so, the canority (ph) of saying,
8 well you did it so I can do it, and there should not be
9 any response is not enough. We should be trying to get
10 better. That is what redistricting commission is
11 about. And so again, I hope that we will leave that
12 behind, leave it behind with the Model T, leave it
13 behind with the horse and buggy, leave it behind with
14 the flip phone. We're not going back. Unaffiliated
15 voters are about to eclipse registered Republican
16 voters in North Carolina. Let's go forward. Let's not
17 continue to use the mistakes of the past as
18 justification for making mistakes now that will affect
19 our future. So I hope you'll vote against this bill.
20 Put us to the test to do better. Let's free ourselves
21 from the mistakes of the past. Let's pursue a better
22 future for the citizens of North Carolina. Let's draw
23 a map that lets them be full participants in their
24 government. Thank you.

25 SPEAKER MOORE: For what purpose does the

1 gentleman from Rutherford, Representative Hager, arise?

2 REP. HAGER: To speak on the bill.

3 SPEAKER MOORE: The gentleman has the floor to
4 debate the bill.

5 REP. HAGER: Thank you, Mr. Speaker. You know,
6 we've said this several times. I've said it in
7 committee and to everyone that would listen,
8 Representative Stam accused me of practicing law
9 without a license, but I think I'm okay on the floor
10 just as long as I don't do it outside of here.

11 Representative Michaux and I have talked about
12 this, you know, page 53 of the statement from the
13 three-judge court says, "A failure to establish any
14 (one) of the Gingles factors is fatal to the
15 defendants' claim." Now, there is three thresholds we
16 talked about to meet, and I'm going to go over them
17 real quick because I've got other stuff we need to talk
18 about. Vote dilution must meet all three of these
19 thresholds. This report said that the vote dilution
20 has to -- as a failure of it has shown because there is
21 no voting prioritization in there. It shows it time
22 and time again in this. Representative Jones contends
23 that we are in violation of the Voter Rights Act of
24 Section 2, and he made the statement that sometimes
25 whites vote as a bloc. Well, that's not one of the

1 criteria. The criteria says they regularly vote as a
2 bloc, not sometimes. Sometimes is not the requirement.
3 It's regularly.

4 Now, again, and I would like to talk a little
5 bit of what Representative Hall talked about. I did
6 not say in committee that we had been working on the
7 those for two -- I said, you guys had the same
8 opportunity as we did to work on those. That is what I
9 said. You can check the record. And you would think
10 that most folks in this body would say, well, my
11 district is a gerrymandered district because I won by
12 32 percent my first election. Let me read you a little
13 statistics from the first election I had. In
14 Rutherford County, there's 22,000 Democrats, 12,000
15 Republicans, and 8,000 Independents. I agree with what
16 Representative Jones says. People aren't dumb.
17 They're going to vote where their philosophy is.
18 They're going to vote where their values are; 22,000
19 Democrats, 12,000 Republicans, and I won by 32 percent.
20 The voters know what is going on. They will vote with
21 their values. The voters of the Democrats did not
22 leave the party; the party left them.

23 SPEAKER MOORE: For what purpose does the
24 gentleman from Rockingham, Representative Jones, arise?

25 REP. JONES: To debate the bill a second time.

1 SPEAKER MOORE: The gentleman is recognized to
2 debate the bill a second time.

3 REP. JONES: Thank you, Mr. Speaker. I realize
4 the hour is late, and I will try to make a few brief
5 points. I would just suggest that the minority side
6 has used the vast majority of the time in debate today.
7 So there are a few points that I think deserve to be
8 made just simply for the record.

9 First of all, briefly I would just humbly
10 suggest that we do not live in a democracy. We live in
11 a constitutional republic. And there is quite a change
12 about that, you know, democracy is like two lions and a
13 lamb deciding what to have for dinner. And I would say
14 that things would look very different in our country
15 and if we were really a democracy. But this is the out
16 workings of a system -- of a constitutional republic,
17 and that is why we are here today as representatives of
18 the people to do the work of the people.

19 Secondly, I would just say that with all due
20 respect, there is a degree of hypocrisy to stand up and
21 just suggest that this is no more than partisan
22 bickering. Nobody is saying that, well, you know, it
23 is just great that one side is doing it because the
24 other side used to do it. But I would suggest that
25 everyone in this room, every representative in this

1 room, benefited from the system whether you are in the
2 General Assembly or not, and I was not in the general
3 assembly in the past decade. But in the past decade
4 and some of you in the decades before that benefited
5 from this system quite well, and I never heard a
6 complaint. I never heard a suggestion that we need to
7 change the process. We need to do something
8 differently.

9 Thirdly, I just want to reiterate, just
10 remember these three numbers, 89 percent in the last 40
11 years, the people of North Carolina have voted for the
12 Republican candidate for president 89 percent of the
13 time; 81 percent in the last 16 U.S. Senate races in
14 the last 40 years the people of North Carolina have
15 voted for the Republican candidate 81 percent of the
16 time. And then 77 percent, 77 percent is ten
17 Republicans out of 13 congressional districts. So I
18 would suggest that all of the stuff that we've heard
19 today that, in fact, that is not overrepresentation,
20 that these maps are not overrepresenting. The people
21 of North Carolina have clearly stated that on the
22 federal level, they are identifying more with the
23 Republican Party and that -- you can't gerrymander a
24 statewide election, okay? So when you --

25 REP. HAMILTON: Mr. Speaker.

1 SPEAKER MOORE: For what purpose does the lady
2 from New Hanover, Representative Hamilton, arise?

3 REP. HAMILTON: To see if the gentleman would
4 yield for a question.

5 SPEAKER MOORE: Does the gentleman from
6 Rockingham yield to the lady from New Hanover?

7 REP. JONES: I will gladly yield when I
8 conclude my remarks.

9 SPEAKER MOORE: He doesn't yield at this time.
10 The lady will be recognized if she would like to ask a
11 question later.

12 The gentleman from Rockingham has the floor to
13 continue debating the bill.

14 REP. JONES: Thank you, Mr. Speaker. So, the
15 point that I'm making is that I believe it is wrong to
16 suggest that a split of the three Democrats and ten
17 Republicans is somehow very unfairly wrong. This is a
18 federal election, and when you look at the federal
19 elections that we have conducted over the past 40 years
20 for the U.S. Senate and for the President of the United
21 States, it is very clear that even in a greater
22 percentage of the time, the people have voted for the
23 Republican nominee.

24 Finally, I would like to also talk about voter
25 registration. We keep hearing voter registration, and

1 I think Representative Lewis has very aptly said that
2 we believe that voting history, voting result is a
3 better indicator than voter registration. And the
4 other side continues to point out that we have more
5 registered Democrats than we do registered Republicans
6 in this state, and that is true. And it is also true
7 that we have a rising number of unaffiliated voters.
8 And quite frankly, we incentivize that with the laws in
9 this state because we allow unaffiliated voters to vote
10 in the primary of their choice. It is very easy for
11 people to go back and forth or whatever. But we
12 incentivize people often times to be unaffiliated. I
13 would simply suggest to you that if every registered
14 Democrat goes out and votes Democrat and the registered
15 Republicans vote Republican, and you can split
16 unaffiliateds down the middle, I think Democrats would
17 do very well under these maps. It is very clear that
18 Democratic candidates can win in these districts as
19 we've pointed out. It has been done in other races
20 before.

21 And, finally, my last point, we keep hearing
22 this call for a somehow independent redistricting
23 committee and this idea that maybe we will put on two
24 Democrats and two Republicans, and then we're going to
25 have this one individual that has the great wisdom of

1 King Solomon that has absolutely no partisan
2 affiliation, has no bias whatsoever. Somehow there's
3 this one perfect individual out there that is going to
4 have no bias and is going to have the wisdom of Solomon
5 and we're going to have these perfect maps. And,
6 ladies and gentlemen, I would conclude that that is not
7 going to happen because it is not possible to find that
8 individual. So, again, we thank you for the debate.

9 And, Mr. Speaker, if the lady has her question,
10 I would be happy to yield.

11 SPEAKER MOORE: Does the lady from New Hanover
12 wish to propound a question to the gentleman from
13 Rockingham?

14 REP. HAMILTON: I do, sir.

15 SPEAKER MOORE: She is recognized, and the
16 gentleman has indicated he would yield. The lady has
17 the floor to state her question.

18 REP. HAMILTON: Thank you, Representative
19 Jones. Just curious, over the last 40 years how many
20 state elections that are also run statewide, for
21 instance Governor, Attorney General, et cetera, how
22 many of those positions have elected Republican versus
23 Democrat?

24 REP. JONES: Thank you to the lady for that
25 question; I appreciate that. The point I was making is

1 that this is a federal election. And I don't have the
2 statistics in front of me; perhaps you do. My point is
3 that I think it's irrelevant because we're talking
4 about a federal election, and we all know that there
5 are people in this state that might vote one way on the
6 local election or even the state election but they see
7 the national parties in a very different way. And the
8 minority here can respectfully disagree, but there are
9 many people that feel that on the national level that
10 your party has moved quite a bit to the left and away
11 from the majority of the voters in this state. And
12 that is reflected in the fact that they have voted
13 89 percent of the time for the Republican candidate for
14 president, 81 percent of the time for the Republican
15 candidate for the U.S. Senate. And they might do that,
16 and they might still vote Democrat on a local or state
17 level.

18 REP. HAMILTON: Thank you.

19 SPEAKER MOORE: For what purpose does the
20 gentleman from Harnett, Representative Lewis, arise?

21 REP. LEWIS: I wanted to ask a series of
22 questions to Representative Michaux. No, Mr. Speaker,
23 I would like to speak a second time.

24 SPEAKER MOORE: The gentleman is recognized to
25 debate the bill a final and second time.

1 REP. LEWIS: Thank you, Mr. Speaker. Mr.
2 Speaker and members, I want to thank all of you for
3 your patience today, for the dignity that has been
4 shown in this chamber. Obviously, this is an issue
5 that all of us care very much about in our attempt to
6 best comply with the court ruling. I did want to state
7 a couple of last thoughts for the record and prior to
8 the vote if I could.

9 First of, with all due respect, the Harris
10 opinion does not find racially polarized voting, nor
11 has any member of the body submitted any kind of
12 document showing that there is racially polarized
13 voting in the state. Further, I realize the time has
14 been short, but we've even had members of the minority
15 stand up and speak about possible ways that districts
16 could have been drawn. Yet despite the fact that
17 central staff and even special staff was made available
18 to them, nobody has submitted a map showing how they
19 think the districts should be drawn.

20 I also want to say that these plans in no way
21 guarantee the election of ten Republicans. If you will
22 look at -- I know the lady from New Hanover asked about
23 statewide election results; they're actually -- most of
24 them are on our desk. And you will see that in all 13
25 of these districts, for instance, Attorney General

1 Cooper won them. I think -- I'm not going to go into
2 what some has been said before, but I think it has a
3 great deal to do with the quality of the candidate and
4 the message that they have in trying to elect -- or
5 trying to offer themselves.

6 The final thing that I would like to say is
7 while it has been talked about much throughout the
8 committee and through today's hearing, we did adopt in
9 an open forum what the criteria for these maps would
10 be. We did say that all of the criteria would be
11 considered together, and we would make every effort to
12 harmonize them. I believe the map that you have before
13 you addresses the concerns of the Harris opinion. I
14 believe it provides a way for us to move forward and to
15 move on and comply with the order of the Court, and I
16 would respectfully ask for your support in voting "aye"
17 on adopting these maps. Thank you, Mr. Speaker, and
18 thank you, members of the House.

19 SPEAKER MOORE: Further discussion, further
20 debate. If not, the question before the House is the
21 passage of Senate Bill 2 on its second reading. Those
22 in favor will vote "aye;" those opposed will vote "no."
23 The clerk will open the vote.

24 The clerk will lock the machine and record the
25 vote; 65 having voted in the affirmative and 43 in the

1 negative. Senate Bill 2 passes its second reading and
2 will be read a third time.

3 Further discussion, further debate?

4 For what purpose does the gentleman from
5 Cumberland, Representative Floyd, arise?

6 Further discussion, further debate? If not the
7 question before the House is the passage of Senate Bill
8 2 on it's third reading. Those in favor will say
9 "aye."

10 (Voice vote.)

11 SPEAKER MOORE: Those opposed "no."

12 (Voice vote.)

13 SPEAKER MOORE: In the opinion of the Chair,
14 the ayes have it. The ayes do have it. Senate Bill
15 2 passes its third reading. The bill is ordered
16 enrolled.

17 Special message from the Senate, the clerk will
18 read.

19 CLERK: House Bill 2, Senate Committee
20 Substitute, third edition. A bill to be entitled An
21 Act to Revise Procedures for the Conduct of the 2016
22 Primary Election to Comply with the Court Order in
23 Harris v. McCrory.

24 SPEAKER MOORE: The bill is ordered calendared
25 for immediate consideration. The clerk will read.

1 REP. FLOYD: Mr. Speaker.

2 SPEAKER MOORE: Just a moment. The clerk will
3 read the bill.

4 CLERK: Representative Jones and Hardister,
5 House Bill 2. A bill to be entitled An Act to Revise
6 Procedures for the Conduct of the 2016 Primary Election
7 to Comply with the Court Order in Harris v. McCrory.
8 The General Assembly of North Carolina enacts.

9 SPEAKER MOORE: For what purpose does the
10 gentleman from Cumberland, Representative Floyd, arise?

11 REP. FLOYD: Inquiry, Mr. Speaker.

12 SPEAKER MOORE: The gentleman may state his
13 inquiry.

14 REP. FLOYD: I know my light came on but I also
15 thought I pushed the red button for the last vote.

16 SPEAKER MOORE: How does the gentleman wish to
17 be recorded on the passage of the previous bill on the
18 vote?

19 REP. FLOYD: No.

20 SPEAKER MOORE: The gentleman was recorded as a
21 "no" vote on the prior bill. If the gentleman would
22 like to change it to a yes the Chair will be glad to do
23 that.

24 For what purpose does the gentleman from
25 Rockingham, Representative Jones, arise?

1 REP. JONES: To debate the bill.

2 SPEAKER MOORE: The gentleman has the floor to
3 debate the bill.

4 And again, members, we would ask that the
5 conversations could be held down. We still have our
6 court reporter here recording the proceedings.

7 The gentleman has the floor.

8 REP. JONES: Thank you, Mr. Speaker. Ladies
9 and gentlemen of the House, House Bill 2 that we passed
10 yesterday the Senate has amended and we are in support
11 of the Senate Committee Substitute. The difference is
12 that section 3 of that bill is taken out. We discussed
13 yesterday that section 3 has to do with the
14 presidential election, the electors to the electoral
15 college. And what we voted to do yesterday was to
16 adopt the old or existing congressional primary -- I'm
17 sorry. Congressional maps for the parties to use to
18 submit their presidential electors. That was done by
19 request with both political parties. However, they've
20 changed their mind on that, they would rather go with
21 the new districts if there are new districts and so
22 this section has been taken out. And so what that
23 simply means is that if this plan goes forth and there
24 is a congressional primary on June 7 and we adopt these
25 congressional maps or any congressional maps, whatever

1 congressional districts we end up using to elect our
2 congressmen, we will use those same districts to select
3 the presidential electors. So that is the change, and
4 I would ask for a green vote that we support the Senate
5 Committee Substitute to House Bill 2.

6 SPEAKER MOORE: So, does the gentleman wish to
7 make a motion to concur with the Senate Committee
8 Substitute for House Bill 2?

9 REP. JONES: Yes, sir. I make a motion to
10 concur.

11 SPEAKER MOORE: The gentleman has made that
12 motion and has debated the motion. Further discussion,
13 further debate on the motion to concur? If not, the
14 question before the House is the motion to concur with
15 the Senate Committee Substitute to House Bill 2. Those
16 in favor will vote "aye" those opposed will vote "no."
17 The clerk will open the vote.

18 Do the following members wish to record on this
19 vote: Representatives Cleveland, Steinburg, Whitmire,
20 and Blust?

21 The clerk will lock the machine and record the
22 vote; 75 having voted in the affirmative and 30 in the
23 negative. The motion to concur with the Senate
24 Committee Substitute to House Bill 2 is adopted. The
25 bill is ordered enrolled and sent to the Governor by a

1 special messenger.

2 The House will be at ease.

3 (At ease.)

4 SPEAKER MOORE: The House will come back to
5 order. Members, the House is about to go into recess
6 until 3:00. However, I want the members to know at
7 3:00 there will be no votes. The only purpose for the
8 3:00 session is for ratification. We are going to wait
9 on ratification for awhile until we hear some news
10 perhaps from Washington. So for those members who
11 would like to be back at 3:00, you're welcome to do so,
12 but the Chair does not anticipate any votes at that
13 time.

14 Notices and announcements?

15 For what purpose does the lady from Yancey,
16 Representative Presnell, arise?

17 REP. PRESNELL: For a moment of personal
18 privilege.

19 SPEAKER MOORE: The lady has the floor to speak
20 to a point of personal privilege.

21 The house will come to order.

22 REP. PRESNELL: I just wanted to wish my seat
23 mate, Representative Turner, a Happy Birthday.

24 SPEAKER MOORE: Further notices and
25 announcements? If not, the House will stand in recess

1 until 3:00 p.m.

2 (THE PROCEEDINGS IN THIS MATTER ADJOURNED AT 1:34 P.M.)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

CERTIFICATE

I, Rachel L. Hammond, a Notary Public in and for the State of North Carolina duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that on February 19, 2016, this hearing was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding 86 pages represents a true and accurate transcript of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 25th day of February, 2016.



Notary Public

Rachel L. Hammond
Notary Number
201126500152

NORTH CAROLINA GENERAL ASSEMBLY
NORTH CAROLINA HOUSE OF REPRESENTATIVES

TRANSCRIPT OF THE PROCEEDINGS
FLOOR SESSION TWO (3:00 P.M.)

In Raleigh, North Carolina
Friday, February 19, 2016
Reported by Rachel L. Hammond, CVR-M

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

1 (Reporter's note: Proceedings in this matter
2 began at 3:00 p.m. on February 19, 2016.)

3 SPEAKER MOORE: The House will come back to
4 order. Ratification of bills and resolutions. The
5 clerk will read.

6 CLERK: The Enrolling Clerk reports the
7 following: Bills duly ratified, properly enrolled, and
8 prepared for presentation to the office of the
9 Secretary of State: Senate Bill 2, An Act to Realign
10 the Congressional Districts, As Recommended by the
11 Joint Select Committee on Congressional Redistricting,
12 and Comply to the Court Order in Harris v. McCrory.

13 The enrolling clerk reports the following bills
14 duly ratified for presentation to the Governor: House
15 Bill 2, An Act to Revise Procedures for the Conduct of
16 the 2016 Primary Election to Comply with the Court
17 Order in Harris v. McCrory.

18 The enrolling clerk reports the following
19 resolution duly ratified, properly enrolled, and
20 prepared for the presentation to the office of the
21 Secretary of State: House Joint Resolution 3, A Joint
22 Resolution Providing for Adjournment Sine Die of the
23 2016 Extra Session.

24 SPEAKER MOORE: Notices and announcements?
25 The gentleman from Gaston, Representative

1 Torbett, is recognized for a motion.

2 REP. TORBETT: Thank you, Mr. Speaker. Mr.
3 Speaker, I move that the 2016 Extra House of
4 Representatives Session do now adjourn sine die.

5 SPEAKER MOORE: Representative Torbett moves
6 seconded by Representative Langdon, that the 2016
7 Special Session of the House of Representatives do now
8 adjourn sine die.

9 Those in favor will say "aye."

10 (Voice vote.)

11 SPEAKER MOORE: Those opposed "no." The ayes
12 have it.

13 It is ordered that a message be sent to the
14 Senate informing that honorable body that the House has
15 concluded the public business and now stands ready to
16 adjourn.

17 Message from the Senate. The clerk will read.

18 CLERK: Mr. Speaker: The Senate has concluded
19 the business of the 2016 Extra Session of the 2015
20 General Assembly and is adjourning sine die, pursuant
21 to House Joint Resolution 3, A Joint Resolution
22 Providing for Adjournment Sine Die of the 2016 Extra
23 Session. Respectfully, Sarah Lang, Principal Clerk.

24 SPEAKER MOORE: Noted. I now declare this
25 House of the 2016 General Assembly Extra Session

1 adjourned sine die.

2 (THE PROCEEDINGS IN THIS MATTER ADJOURNED AT 3:11 P.M.)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

CERTIFICATE

I, Rachel L. Hammond, a Notary Public in and for the State of North Carolina duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that on February 19, 2016, this hearing was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding 4 pages represents a true and accurate transcript of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 25th day of February, 2016.


Notary Public

Rachel L. Hammond
Notary Number
201126500152

Exhibit G

FORMULA

$$(100 * (G08G_RV + G08S_RV + G08K_RV + G12G_RV + G12O_RV + G10S_RV + G14S_RV)) / (G08G_RV + G08G_DV + G08S_DV + G08S_RV + G08K_DV + G08K_RV + G12G_DV + G12G_RV + G12O_DV + G12O_RV + G10S_DV + G10S_RV + G14S_DV + G14S_RV)$$

SEVEN FACTORS

1. 08 Governor
2. 08 U. S. Senate
3. 08 Commissioner of Insurance
4. 12 Governor
5. 12 Commissioner of Labor
6. 10 U. S. Senate
7. 14 U. S. Senate

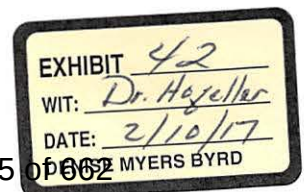


Exhibit H

<p>IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA</p> <p>COMMON CAUSE, et al.,)) Plaintiffs,) vs.) Civil Action No. 1:16-CV-2016-WO-JEP) ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) Joint Select Committee on) Congressional Redistricting,) et al.,)) Defendants.)) LEAGUE OF WOMEN VOTERS OF NORTH) CAROLINA, et al.,)) Plaintiffs,) vs.) Civil Action No. 1:16-CV-1164) ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) 2016 Joint Select Committee on) Congressional Redistricting,) et al,)) Defendants.))) VIDEOTAPED DEPOSITION OF THOMAS B. HOFELLER - VOLUME II</p> <hr/> <p>2:02 P.M. FRIDAY, FEBRUARY 10, 2017</p> <hr/> <p>POYNER SPRUILL 301 FAYETTEVILLE STREET, SUITE 1900 RALEIGH, NORTH CAROLINA</p> <p>255</p>	<p>1 2 Also Present: Dalton Oldham, Esq. Alesha Brown, SCSJ 3 4 The Reporter: Discovery Court Reporters and Legal Videographers, LLC 5 BY: DENISE MYERS BYRD, CSR 8340 BRENT TROUBLEFIELD, 6 VIDEOGRAPHER 4208 Six Forks Road, Suite 1000 7 Raleigh, NC 27609 (919) 424-8242 (919) 649-9998 Direct Denise@DiscoveryDepo.com 8 9 10 --o0o-- 11 12 INDEX OF EXAMINATION Page 13 14 By Ms. Earls..... 260 300 15 16 By Mr. Speas..... 275 17 18 --o0o-- 19 20 21 22 23 24 25</p> <p>257</p>
<p>1 APPEARANCES 2 3 For the Plaintiffs: Common Cause, et al. 4 POYNER SPRUILL BY: EDWIN M. SPEAS, JR., ESQ. CAROLINA P. MACKIE, ESQ. 5 301 Fayetteville Street Suite 1900 6 Raleigh, NC 27601 (919) 783-1140 ESpeas@poynerspruill.com CMackie@poynerspruill.com 7 8 9 For the Plaintiffs: League of Women Voters, et al. 10 SOUTHERN COALITION FOR SOCIAL JUSTICE 11 BY: ANITA S. EARLS, ESQ. 1415 Highway 54 12 Suite 101 Durham, NC 27707 13 (919) 323-3380 x 115 AnitaEarls@southerncoalition.org 14 15 For the Defendants: 16 OGLETREE DEAKINS NASH SMOAK BY: THOMAS A. FARR, ESQ. 17 4208 Six Fork Road Suite 1100 18 Raleigh, NC 27609 (919) 787-9700 Thomas.Farr@ogletreedeakins.com 19 Phil.Strach@Ogletreedeakins.com 20 21 NC DEPARTMENT OF JUSTICE BY: JAMES BERNIER, JR., ESQ. 22 PO Box 629 Raleigh, NC 27602 (919) 716-6400 23 APeters@ncdoj.gov JBernier@ncdog.gov 24 25</p> <p>256</p>	<p>1 INDEX OF EXHIBITS 2 3 EXHIBIT NO. DESCRIPTION Page 4 42 Formula - Seven Factors 260 5 43 Document prepared by Eddie Speas 282 6 44 Maps created by plaintiffs' counsel 301 7 8 --o0o-- 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>258</p>

<p>1 THE VIDEOGRAPHER: On record at 2 2:02 p.m. Today's date is February 10, 2017. 3 This is Volume II of the deposition of 4 Thomas Hofeller. 5 Could the court reporter now please 6 swear in the witness. 7 THOMAS B. HOFELLER, 8 having been first duly sworn or affirmed by the 9 Certified Shorthand Reporter and Notary Public 10 to tell the truth, the whole truth and nothing 11 but the truth, testified as follows: 12 --o0o-- 13 MR. FARR: Are we going to identify 14 ourselves. 15 MS. EARLS: Sure. So this is Anita 16 Earls for the League of Women Voters plaintiffs. 17 MR. SPEAS: Eddie Speas for the Common 18 Cause plaintiffs. 19 MS. MACKIE: Caroline Mackie, Common 20 Cause plaintiffs. 21 MR. BERNIER: Assistant Attorney 22 General James Bernier for defendants. 23 MR. FARR: Tom Farr, Ogletree Deakins, 24 representing the defendants. 25 And before we start, I want to point</p> <p style="text-align: right;">259</p>	<p>1 Exhibit 28, what was previously marked as 2 Exhibit 28. 3 A. Do you want to see this, Tom? 4 MR. FARR: No. We've got a copy. 5 BY MS. EARLS: 6 Q. And my question is: The seven factors on 7 Exhibit 42, do those all come from the elections 8 that are identified in this Database Field Key 9 that's Exhibit 28? 10 A. I believe so, yes. 11 Q. And can you tell me what the shorthand code is 12 in the formula? So what do each of those codes 13 stand for? 14 A. The first letter in the field identifier which 15 you describe as the code is the -- stands for 16 general election, "08" is the general election 17 of '08 and "G" would be governor. 18 Q. And then -- 19 A. Then the dash RV is Republican vote. 20 Q. And the same is true for the remaining elements 21 of the formula, that is to say -- 22 A. Well, the key code is the "K" which -- "GO8K," 23 that would be the third factor there. That 24 would be the general election of '08. "K" is 25 commissioner of insurance.</p> <p style="text-align: right;">261</p>
<p>1 out that the defendants have agreed, as an 2 accommodation to the plaintiffs, to make 3 Dr. Hofeller available to answer questions that 4 were posed to me by plaintiffs' counsel about 5 his formula. That is our understanding of what 6 the purpose of this deposition is about or any 7 questions reasonably related to the questions I 8 was asked about Dr. Hofeller's formula. 9 And I would also point out that I added 10 up the minutes in the previous deposition, and I 11 think there's 55 or less minutes left. 12 MS. EARLS: Okay. Thank you, Tom. I'd 13 like to mark this as Exhibit 42. 14 (WHEREUPON, Plaintiffs' Exhibit 42 was 15 marked for identification.) 16 EXAMINATION 17 BY MS. EARLS: 18 Q. Dr. Hofeller, can you identify what has been 19 marked as Exhibit 42, please. 20 A. It's a one-sheet piece of paper which has the 21 formula which I entered into Maptitude to have a 22 feature displayed on VTDs on the system. A 23 thematic, I guess, would probably be the better 24 word. 25 Q. And I also want to ask you to take a look at</p> <p style="text-align: right;">260</p>	<p>1 Then you go on to G12, "G" which is 2 governor in 2012. 3 And G10S is Senate in 2010. 4 And I think I skipped some over here. 5 I'm sorry. Let's start at the beginning again 6 after the 100. 7 Q. Okay. 8 A. The first one is for governor. The next one is 9 for senate. The next one is for commissioner of 10 insurance. Then you go into the 12 general. 11 You have governor. You have commissioner of 12 labor. And in G10 you have U.S. Senate. And in 13 14 you have U.S. Senate. 14 Q. And then what does the -- so that's in the 15 numerator of the formula? 16 A. The numerator of those same races that you have 17 both the Democratic and Republican vote. 18 Q. You mean the denominator? 19 A. The denominator. 20 Q. Right. 21 A. Okay. So the numerator, just to make it clear, 22 is the sum of the Republican votes. The 23 denominator is the sum of the Republican plus 24 the Democratic votes. 25 Q. And this formula, then, does not include any</p> <p style="text-align: right;">262</p>

<p>1 votes that were for independent candidates or --</p> <p>2 A. You're correct.</p> <p>3 Q. When did you devise this formula?</p> <p>4 A. When I started on the -- actually, I devised it</p> <p>5 first during the Harris case. I was trying to</p> <p>6 prove that no matter what you used, you'd get</p> <p>7 the same district if you maximized for</p> <p>8 Democratic vote in the 12th, but I had this on</p> <p>9 my computer from the very beginning of the '16</p> <p>10 process for the new congressional districts.</p> <p>11 Q. And who did you -- did you talk to anyone about</p> <p>12 the election returns that you would include in</p> <p>13 this formula?</p> <p>14 A. Not that I remember, no.</p> <p>15 Q. So you made the decision to include these seven</p> <p>16 factors?</p> <p>17 A. I did.</p> <p>18 Q. And Exhibit 28, which has the Database Field</p> <p>19 Key, is just -- am I right that that's just a</p> <p>20 listing of all the election returns that were</p> <p>21 available that are reflected in Exhibit 27?</p> <p>22 A. Well, there are more results in your Exhibit 28</p> <p>23 than there are in 42.</p> <p>24 Q. Right.</p> <p>25 A. As I remember the process correctly, this was</p> <p style="text-align: right;">263</p>	<p>1 website, but -- I'm sorry, probably the</p> <p>2 Secretary of State's website for those</p> <p>3 elections, and they had the statewide total of</p> <p>4 those elections.</p> <p>5 Q. And they also had the returns by precinct for</p> <p>6 those elections?</p> <p>7 A. Well, they had them, yes.</p> <p>8 Q. And what I'm trying to understand, when you</p> <p>9 devised this formula --</p> <p>10 A. Yes.</p> <p>11 Q. -- you picked seven elections?</p> <p>12 A. I did.</p> <p>13 Q. And you had at least available to you the 20</p> <p>14 elections that are represented in Exhibit 27.</p> <p>15 A. I had all the elections that the State Board of</p> <p>16 Elections has available publicly on their</p> <p>17 website.</p> <p>18 Q. Okay.</p> <p>19 A. Which I assume would include all of these.</p> <p>20 Q. Okay. So how did you decide to include these</p> <p>21 seven elections in your -- in the formula?</p> <p>22 A. I just thought they were good indicator</p> <p>23 elections. Some of them were better for</p> <p>24 Republicans than others, and I wanted to get a</p> <p>25 good variety of elections.</p> <p style="text-align: right;">265</p>
<p>1 the sheet that helped the members of the</p> <p>2 committee decode the headers on the election</p> <p>3 results that were produced when the bill came to</p> <p>4 committee.</p> <p>5 Q. And my question is just so if you look at</p> <p>6 Exhibit 27 in the notebook in front of you --</p> <p>7 A. 27?</p> <p>8 Q. Yes. Am I correct this is the data that was</p> <p>9 available to the committee when they were</p> <p>10 considering the districts?</p> <p>11 A. You know, I can't testify to that as a matter of</p> <p>12 my personal knowledge because I wasn't there</p> <p>13 when the committee received the bill, but it's</p> <p>14 my understanding that it was the sheet that was</p> <p>15 produced.</p> <p>16 Q. Right. But I'm just wanting to ask about the</p> <p>17 election returns contained in Exhibit 27 that 28</p> <p>18 is the key for.</p> <p>19 These 20 elections, did you have --</p> <p>20 when you were devising this formula, did you</p> <p>21 have access to the data for all 20 elections</p> <p>22 contained in Exhibit 27?</p> <p>23 A. I didn't -- just to be clear on my answer, I</p> <p>24 didn't have Exhibit 27. I looked up the</p> <p>25 elections on the website, the General Assembly's</p> <p style="text-align: right;">264</p>	<p>1 Q. And what made these particular seven good</p> <p>2 indicators?</p> <p>3 A. I just felt in my own mind that they would be</p> <p>4 good elections to have. I don't know how else</p> <p>5 to explain it. I -- never mind.</p> <p>6 Q. Well, I guess I'm asking what about these</p> <p>7 particular elections made them good to predict</p> <p>8 the --</p> <p>9 A. Well, since I haven't reexamined it since I did</p> <p>10 that, and that was almost a year ago, I don't</p> <p>11 really remember exactly what my thinking was at</p> <p>12 that time. All I can say to you is that I</p> <p>13 thought at that time those were good elections</p> <p>14 to have and that they would suit the purposes</p> <p>15 that I needed for data to have available to me</p> <p>16 while these districts were being formulated.</p> <p>17 MR. FARR: Excuse me for a second.</p> <p>18 Tom, would you make sure you let Anita</p> <p>19 finish your question.</p> <p>20 THE WITNESS: I'm sorry. I apologize.</p> <p>21 MS. EARLS: Sometimes my questions are</p> <p>22 awkward, so I understand the challenge.</p> <p>23 BY MS. EARLS:</p> <p>24 Q. You had just said that you -- at the time these</p> <p>25 were the seven elections that you thought would</p> <p style="text-align: right;">266</p>

<p>1 suit your purpose and that's why you included 2 them in the formula.</p> <p>3 What was the purpose that the formula 4 was designed to achieve?</p> <p>5 A. To give me an indication of the two-party 6 partisan characteristics of VTDs.</p> <p>7 Q. Okay. So how did you -- then can you describe 8 to us how you used this formula in drawing the 9 congressional districts.</p> <p>10 A. When I was looking -- when it was necessary, 11 actually, to divide a county, I put the result 12 of this formula -- well, it was actually in 13 the -- on the screen -- and indicated that I 14 wanted to see the precinct or VTD level and used 15 it as a partial guide to where I would put the 16 lines for the districts, but it was not -- it 17 was one of many factors.</p> <p>18 Q. Right. In devising the thematic based on this 19 formula, do you remember how many intervals you 20 had up on the screen?</p> <p>21 A. Well, I think I had some different intervals at 22 different times, but my usual method is to use 23 5 percent intervals usually centered around 24 50 percent.</p> <p>25 Q. So can you describe, then, how that would work.</p> <p style="text-align: right;">267</p>	<p>1 2:16 p.m. (Brief Recess.)</p> <p>3 THE VIDEOGRAPHER: On record at 4 2:17 p.m.</p> <p>5 MS. EARLS: So I'm asking John 6 O'Hale -- John, do you want to identify -- well, 7 I guess you don't have a mic.</p> <p>8 John O'Hale, who is assisting us for 9 the purpose -- assisting the plaintiffs for the 10 purposes of this deposition, and he's an 11 attorney with Poyner Spruill.</p> <p>12 BY MS. EARLS:</p> <p>13 Q. Dr. Hofeller, can you describe how you -- how 14 you divided up the data to create your thematic 15 when you were using this formula so that John 16 can replicate that?</p> <p>17 A. Okay. Well, I can give you an example of one 18 way I might have divided it up rather than the 19 way.</p> <p>20 Q. Okay.</p> <p>21 A. I already stated already that I might have used 22 different breaks at different times.</p> <p>23 Q. Okay.</p> <p>24 A. I just don't really remember.</p> <p>25 Q. Okay. What is one way that you might have done</p> <p style="text-align: right;">269</p>
<p>1 How many -- like what would be the lowest bound 2 and the upper bound with the 5 percent 3 intervals?</p> <p>4 A. I usually use eight factors. So maybe it would 5 be three above 50 and five below or maybe it 6 would be the other way around, but it's centered 7 on 50.</p> <p>8 Unfortunately, Maptitude doesn't have 9 an option that allows you to pick that right off 10 the bat, so you have to enter them in manually.</p> <p>11 Q. You have to enter in what manually?</p> <p>12 A. The percentage breaks on the intervals.</p> <p>13 MS. EARLS: John, are you ready to try 14 to -- I want to -- for you to be able to 15 describe how you did that in Maptitude and we 16 can then print out a screen shot and you can 17 tell us if that's what it looked like when you 18 were using this formula to create a thematic.</p> <p>19 THE WITNESS: It might be difficult for 20 me to do it without seeing the screen that he's 21 using.</p> <p>22 MS. EARLS: John, are you able to -- I 23 don't think -- well, first, can we break and let 24 me confer.</p> <p>25 THE VIDEOGRAPHER: Off record at</p> <p style="text-align: right;">268</p>	<p>1 it?</p> <p>2 A. Let's see. 50 to 55, 55 to 60, 65 to 100. And 3 below would have been 50 to 45, 45 to 40, 40 to 4 35, 35 to 30, 30 to 25 and 25 and below. If 5 that's eight intervals. I don't have a scratch 6 pad here so I don't --</p> <p>7 Q. And is there any particular color scheme that 8 you used to create the thematic?</p> <p>9 A. Yes. I used the rainbow theme.</p> <p>10 Q. Okay. So I'm going to give John a minute to 11 pull that up and print it out and then we'll 12 make it an exhibit and see if that helps us 13 understand what you were looking at when you 14 were --</p> <p>15 A. Sure.</p> <p>16 Q. It won't have data because we don't have the 17 same data set, but at least the thematic -- we 18 can look at that.</p> <p>19 A. Well, if it isn't the same data, it won't be the 20 same. Okay, we'll just --</p> <p>21 MR. FARR: He'll look at what you 22 produce.</p> <p>23 THE WITNESS: I'll look and then 24 comment.</p> <p>25 MS. EARLS: Okay. Thank you.</p> <p style="text-align: right;">270</p>

<p>1 Okay, John, just let me know. 2 (Discussion held off the written 3 record.) 4 BY MS. EARLS: 5 Q. Did you use this formula in any other analysis 6 other than the thematic for -- as you were 7 drawing the districts? 8 A. Okay, I'm not -- I'm not clear on the precision 9 of your question there. Could you try it again, 10 please. 11 Q. Yes. I'm trying to understand in addition to 12 using this formula to create a thematic to show 13 a percentage of Republican vote -- am I correct 14 that that's what it showed you, the percentage 15 of Republican vote in a VTD? 16 A. The percentage of the Republican vote was of the 17 two-party vote. 18 Q. Right. The percentage of the Republican vote of 19 the two-party vote? 20 A. Yes. 21 Q. At the VTD level? 22 A. At the VTD level. 23 Q. Did you use this formula for any other 24 evaluation of the districts? 25 A. Okay. When I was -- at the county level?</p> <p style="text-align: right;">271</p>	<p>1 A. The characteristics, once again, at the risk of 2 being redundant here, the Republican two-party 3 vote of the VTD. 4 Q. Did you -- did anyone else look at this formula 5 or the thematic that was based on it while you 6 were drawing the districts? 7 A. I believe I said in the first part of this 8 deposition the other day that there were people 9 who came in to see the work and I would show 10 them the same thematic display. 11 Q. And you developed this formula and used it as 12 the thematic display because you thought it 13 accurately reflected the underlying partisan -- 14 the likely partisan outcome at the VTD level? 15 MR. FARR: Objection to the form. 16 You can answer. 17 THE WITNESS: Which word are you using, 18 "likely" or "underlying"? 19 BY MS. EARLS: 20 Q. Likely. Let's start with likely. 21 A. Okay. I don't -- I don't -- that is not a 22 predicate that I think I can answer the question 23 to. I don't know how -- exactly how precincts 24 are going to vote in the future. It varies from 25 election to election.</p> <p style="text-align: right;">273</p>
<p>1 Q. At any level. 2 A. I did not use it. When I was at the block 3 level, I did not use it. And those were the 4 only three levels. 5 Q. And so you're saying that when you would -- as 6 you were drawing the districts, when you were 7 looking at data at the county level, you didn't 8 use this formula? 9 A. No. 10 Q. And so the only -- as you were drawing 11 districts, the only time you looked at the 12 results of this formula was when you were -- 13 when you were looking at the VTD level? 14 A. Yes. Because keeping counties whole was a 15 higher priority, and I didn't really need the 16 data to do that. 17 Q. So how did the data help you as you were using 18 at the VTD level? 19 A. Well, it gave me an idea of the characteristics 20 of the VTDs that were on the screen. 21 Q. And what characteristics? 22 A. Well, the formula. 23 Q. Right. But I'm just asking you to tell us what 24 the characteristics -- what characteristics 25 using the formula gave you for the VTDs.</p> <p style="text-align: right;">272</p>	<p>1 Q. But you thought this formula would give you some 2 useful information regarding the partisan makeup 3 of the VTD? 4 A. Partisan characteristics, yes. 5 Q. And did you think that knowing the partisan 6 characteristics of the VTD based on this formula 7 would be of assistance in predicting future 8 elections? 9 A. I think I explained before, I think, that 10 individual VTDs tend to carry -- all things 11 being equal, tend to carry the same 12 characteristics through a string of elections. 13 They may not have the same exact result, but 14 they may, absent some unusual feature, line up 15 from one end of the spectrum -- political 16 spectrum to the other in roughly the same order. 17 MS. EARLS: I would request 18 permission -- at this point, I want to give John 19 a little more time to get the intervals and the 20 thematic right, but I'm finished otherwise with 21 the questions I have. I want to give Mr. Speas 22 an opportunity. Can we do that? 23 MR. FARR: Sure. 24 /// 25 ///</p> <p style="text-align: right;">274</p>

<p>1 EXAMINATION</p> <p>2 BY MR. SPEAS:</p> <p>3 Q. Can you hear me, Dr. Hofeller?</p> <p>4 A. Yes, I can.</p> <p>5 Q. How are you today?</p> <p>6 A. All right.</p> <p>7 Q. Good. Let me make sure I understand. You used</p> <p>8 this formula set out in Exhibit 42 to give you</p> <p>9 some indication of the partisan character of</p> <p>10 VTDs; is that right?</p> <p>11 A. That's correct.</p> <p>12 MR. FARR: Let him finish, too, Tom.</p> <p>13 THE WITNESS: I'm sorry, I thought he</p> <p>14 was finished.</p> <p>15 MR. SPEAS: I was.</p> <p>16 THE WITNESS: I heard a question mark.</p> <p>17 MR. FARR: I just want to make sure.</p> <p>18 BY MR. SPEAS:</p> <p>19 Q. You did not use this formula to give you some</p> <p>20 indication of the partisan character of</p> <p>21 counties, correct?</p> <p>22 A. I'm sorry, I didn't hear all that question.</p> <p>23 Q. You did not use this formula to give you some</p> <p>24 indication of a partisan character of a county?</p> <p>25 A. Of a what?</p> <p style="text-align: right;">275</p>	<p>1 predicate of your question. I'm sorry. There</p> <p>2 were a lot of factors that were involved in</p> <p>3 choosing the locations of the districts.</p> <p>4 BY MR. SPEAS:</p> <p>5 Q. And one of those was the partisan character of</p> <p>6 the county, correct?</p> <p>7 A. Yes, but it was not the main characteristic.</p> <p>8 Q. And my question is: What did you use to</p> <p>9 determine the partisan character of a county?</p> <p>10 What elections? What other information did you</p> <p>11 use to determine the partisan character of a</p> <p>12 county?</p> <p>13 A. My answer is the same as when you asked the</p> <p>14 question before. I did not use any data to</p> <p>15 determine that.</p> <p>16 Q. Did you simply know what the partisan character</p> <p>17 of counties was?</p> <p>18 A. I wish my mind was that good -- my memory was</p> <p>19 that good.</p> <p>20 Q. Is it entirely an accident that the result of</p> <p>21 the 2016 election was 10 Republicans and 3</p> <p>22 Democrats?</p> <p>23 MR. FARR: Objection.</p> <p>24 You may answer.</p> <p>25 THE WITNESS: Well, again, I don't</p> <p style="text-align: right;">277</p>
<p>1 Q. County.</p> <p>2 MR. FARR: County.</p> <p>3 THE WITNESS: Of a county as a whole?</p> <p>4 BY MR. SPEAS:</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. What did you use to determine the -- to give you</p> <p>8 a partisan indication of a county as a whole?</p> <p>9 A. I didn't use anything.</p> <p>10 Q. You simply randomly grouped counties together to</p> <p>11 form these districts without regard to their</p> <p>12 partisan performance; is that correct?</p> <p>13 A. No, that's not correct.</p> <p>14 Q. Then how did you use -- what did you use to</p> <p>15 determine the partisan character of a county as</p> <p>16 a whole?</p> <p>17 A. I already said to you I didn't determine the</p> <p>18 partisan character of a county as a whole.</p> <p>19 Q. How did you determine to assign a county to a</p> <p>20 particular district to carry out the direction</p> <p>21 to create a plan that would likely produce a</p> <p>22 10-3 Republican split?</p> <p>23 MR. FARR: Objection to the form.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I don't agree with the</p> <p style="text-align: right;">276</p>	<p>1 understand your -- you mean like random?</p> <p>2 BY MR. SPEAS:</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. How did you --</p> <p>6 A. But it wasn't -- that wasn't the prime factor</p> <p>7 that I was using in the creation of the plan, as</p> <p>8 I stated before.</p> <p>9 Q. I'm not asking you what your view of your prime</p> <p>10 factor was.</p> <p>11 I'm asking you what information you</p> <p>12 used to assign a county to a district with</p> <p>13 regard to partisan performance.</p> <p>14 A. May I see, please, the criteria sheet from the</p> <p>15 committee that I saw in the last deposition.</p> <p>16 Q. Sure. Exhibit 24.</p> <p>17 MR. OLDHAM: Eddie, do you mind if we</p> <p>18 hand him a copy of that?</p> <p>19 MR. FARR: He's got it.</p> <p>20 BY MR. SPEAS:</p> <p>21 Q. Do you have Exhibit 24 in front of you?</p> <p>22 A. Yes.</p> <p>23 Q. And with Exhibit 24 in front of you, can you</p> <p>24 answer the question how you decided to assign a</p> <p>25 county to a district in order to carry out the</p> <p style="text-align: right;">278</p>

<p>1 partisan advantage criteria?</p> <p>2 A. Again, I don't agree with the premise of your</p> <p>3 question.</p> <p>4 Q. Can you answer my question?</p> <p>5 A. I can answer your question by saying I don't --</p> <p>6 I don't agree with the premise of your question.</p> <p>7 If you ask it a different way, I may be able to</p> <p>8 answer it.</p> <p>9 Q. How did you decide to assign a county to a</p> <p>10 district?</p> <p>11 A. The first criteria which governed the makeup of</p> <p>12 the plan was to create a plan which would</p> <p>13 satisfy the requirements of the Court to draw a</p> <p>14 plan and it would conform with what we felt</p> <p>15 would be the view of the Court of the plan, to</p> <p>16 get a plan that was acceptable to the Court.</p> <p>17 And in order to do that, whole counties</p> <p>18 would be used. Of course, the -- the federal</p> <p>19 factors of equal population and compactness in</p> <p>20 criteria; to some extent, of course, previous</p> <p>21 districts, to the extent it was possible given</p> <p>22 the limitations of the decision.</p> <p>23 So except for the fact that two</p> <p>24 districts were broken up that were in the plan</p> <p>25 before, the 4th district and the 12th district,</p> <p style="text-align: right;">279</p>	<p>1 Q. And what partisan advantage was -- did the --</p> <p>2 did the legislature seek, a 10-3 advantage?</p> <p>3 A. Well, my understanding of the way it was to work</p> <p>4 was within the bounds of satisfying the other</p> <p>5 criteria that there could -- that partisan</p> <p>6 advantage would be considered, yes.</p> <p>7 Q. And how did you satisfy the legislature's desire</p> <p>8 to obtain a partisan advantage in drawing the</p> <p>9 plan?</p> <p>10 A. When I was particularly looking at split</p> <p>11 counties, I looked at the VTD thematic.</p> <p>12 Q. And what about -- when you were assigning a</p> <p>13 whole county to a district, what did you look at</p> <p>14 in deciding which district to assign that whole</p> <p>15 county to?</p> <p>16 A. That was primarily a function of compactness,</p> <p>17 keeping counties whole and keeping districts, to</p> <p>18 the extent possible, in the areas that they were</p> <p>19 before.</p> <p>20 Q. What partisan information did you look at in</p> <p>21 deciding whether to assign a county to one</p> <p>22 district or another?</p> <p>23 A. I believe I already told you that I didn't have</p> <p>24 the partisan characteristics of the counties</p> <p>25 displayed.</p> <p style="text-align: right;">281</p>
<p>1 almost to complete extent, my first goal was to</p> <p>2 draw a map that was whole -- had as few county</p> <p>3 splits as possible, therefore as many counties</p> <p>4 whole as possible and that was compact,</p> <p>5 contiguous and, to the extent possible, retained</p> <p>6 incumbents.</p> <p>7 Q. Okay. Was one of your directions to draw a plan</p> <p>8 that would likely produce a 10-3 partisan</p> <p>9 Republican -- partisan -- a 10-3 Republican</p> <p>10 advantage?</p> <p>11 MR. FARR: Objection to the form.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: Okay. Just say that</p> <p>14 again.</p> <p>15 BY MR. SPEAS:</p> <p>16 Q. Was one of your directions to draw a plan that</p> <p>17 would produce a 10-3 Republican advantage?</p> <p>18 MR. FARR: Objection to the form.</p> <p>19 THE WITNESS: Actually, not to my</p> <p>20 recollection, no. That was not the prime</p> <p>21 criteria, the instructions that I was given.</p> <p>22 BY MR. SPEAS:</p> <p>23 Q. Was one of the criteria adopted by the General</p> <p>24 Assembly entitled partisan advantage?</p> <p>25 A. Yes.</p> <p style="text-align: right;">280</p>	<p>1 Q. Did you use the formula set out in Exhibit 42 to</p> <p>2 determine the partisan character of the plan as</p> <p>3 a whole?</p> <p>4 A. I did after the plan was finished.</p> <p>5 Q. So after the plan was finished, did you apply</p> <p>6 the formula to the plan as a whole?</p> <p>7 A. Yes.</p> <p>8 Q. And what was the results of that application of</p> <p>9 the formula to the plan as a whole?</p> <p>10 A. I believe that the plan was a 3-D -- 2 or 3</p> <p>11 split, 7 Republican plan, or it could be 8-2, 3.</p> <p>12 Does that add up? No -- yes.</p> <p>13 Q. Let me ask the court reporter to mark this</p> <p>14 document as Exhibit 43.</p> <p>15 (WHEREUPON, Plaintiffs' Exhibit 43 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. SPEAS:</p> <p>18 Q. Dr. Hofeller, Exhibit 43 is a document that I</p> <p>19 prepared. It reflects my effort to apply your</p> <p>20 formula using the results of the seven</p> <p>21 elections. And as you can see in the left</p> <p>22 column there are elections listed.</p> <p>23 Is it accurate that the seven elections</p> <p>24 listed there are the seven elections listed in</p> <p>25 Exhibit 42?</p> <p style="text-align: right;">282</p>

<p>1 A. I believe so, yes.</p> <p>2 Q. And is it correct that the numerator in your</p> <p>3 formula is the Republican vote for each of those</p> <p>4 elections in the year -- in the particular year?</p> <p>5 A. I'm sorry, repeat that again.</p> <p>6 Q. Is it true that the numerator in your formula is</p> <p>7 the Republican vote in those seven elections?</p> <p>8 A. If you apply the formula that I used for</p> <p>9 thematic coloring of VTDs to your data, that</p> <p>10 would be your use of the formula.</p> <p>11 Q. Is that the way you used the formula to</p> <p>12 determine the partisan impact of the plan as a</p> <p>13 whole?</p> <p>14 A. No.</p> <p>15 Q. How did you determine -- use your formula to</p> <p>16 determine the partisan impact of the plan as a</p> <p>17 whole?</p> <p>18 A. I would look at the formula as regards to each</p> <p>19 district, not to the state as a whole.</p> <p>20 Q. Okay. And how did you determine the number of</p> <p>21 votes cast in each district from each of those</p> <p>22 seven elections?</p> <p>23 A. If you look at Maptitude, there is usually</p> <p>24 sitting behind the map another box that has the</p> <p>25 data in it which shows the data for each -- each</p> <p style="text-align: right;">283</p>	<p>1 you define partisan performance, but I produced</p> <p>2 the percentages and looked at the percentages</p> <p>3 and made my -- my own determination of how I</p> <p>4 thought the plan had turned out, yes.</p> <p>5 BY MR. SPEAS:</p> <p>6 Q. And what were those percentages? How did you</p> <p>7 calculate those percentages?</p> <p>8 A. According to the formula.</p> <p>9 Q. Okay. And this formula produces a percentage,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And if the formula produced the percent --</p> <p>13 50 percent for a particular district, how would</p> <p>14 you classify that district?</p> <p>15 A. 50 percent exactly?</p> <p>16 Q. Uh-huh.</p> <p>17 A. I'd classify that as a swing district.</p> <p>18 Q. And if it produced a 55 percent Republican vote,</p> <p>19 how would you characterize the district?</p> <p>20 A. I would -- I would --</p> <p>21 MR. FARR: Objection to the form, but</p> <p>22 go ahead and answer it.</p> <p>23 THE WITNESS: A district over 55 would</p> <p>24 be at least leaning -- leaning or Republican.</p> <p>25 So it depends what -- what you ascribe to each</p> <p style="text-align: right;">285</p>
<p>1 election. And sometimes percentages are also</p> <p>2 displayed for those. You can extract manually</p> <p>3 pretty much -- not manually, but you can extract</p> <p>4 that from Maptitude into an Excel spreadsheet</p> <p>5 and you can use the Excel spreadsheet to add up</p> <p>6 these factors and do the division that you did</p> <p>7 on this -- according to the same formula that's</p> <p>8 on the sheet that's in Exhibit 42.</p> <p>9 Q. And are those Excel spreadsheets still on your</p> <p>10 computer?</p> <p>11 A. I have an Excel spreadsheet, yes, for that, for</p> <p>12 the final plan.</p> <p>13 MR. SPEAS: And, Mr. Farr, would you</p> <p>14 produce that Excel spreadsheet -- or those Excel</p> <p>15 spreadsheets for us, please.</p> <p>16 THE WITNESS: It would just be one</p> <p>17 sheet. Actually, I don't know that I have the</p> <p>18 whole sheet. I just have the result.</p> <p>19 BY MR. SPEAS:</p> <p>20 Q. So you used the information on this Excel</p> <p>21 spreadsheet to make some prediction with regard</p> <p>22 to the partisan -- likely partisan performance</p> <p>23 of each district; is that correct?</p> <p>24 MR. FARR: Objection.</p> <p>25 THE WITNESS: It kind of depends on how</p> <p style="text-align: right;">284</p>	<p>1 description.</p> <p>2 BY MR. SPEAS:</p> <p>3 Q. And how would you classify a district where the</p> <p>4 percent was 60 percent Republican?</p> <p>5 A. I think I would look at that district which</p> <p>6 would be one that Republicans would most likely</p> <p>7 win all the time.</p> <p>8 Of course, you know, you have things</p> <p>9 that go on in campaigns that surprise everybody,</p> <p>10 so nothing is a sure bet. A lot of it depends</p> <p>11 on candidates, the general political climate,</p> <p>12 funding, opponents. Lots of factors go into</p> <p>13 elections.</p> <p>14 Q. Okay. And how would you -- how did you classify</p> <p>15 a district for which the percentage was 45</p> <p>16 percent?</p> <p>17 A. Exactly 45 percent?</p> <p>18 Q. Yes.</p> <p>19 A. That's kind of on the line between a swing</p> <p>20 district and a Democratic district.</p> <p>21 Q. Is it accurate in your evaluation that for</p> <p>22 districts between 50 and 45 percent you</p> <p>23 classified them as leaning Democratic districts?</p> <p>24 A. I'm sorry. Between --</p> <p>25 Q. 50 and 45. 45 and 50.</p> <p style="text-align: right;">286</p>

<p>1 A. Between 50 and 45, I think they're in the swing 2 district range, yes.</p> <p>3 Q. And less than 45, how did you classify?</p> <p>4 A. Well, they're going from leaning Democratic 5 districts, highly leaning Democratic districts 6 to pretty much safe Democratic districts.</p> <p>7 Q. And was there a percent at which you would 8 classify a district as a safe Democratic 9 district?</p> <p>10 A. I would say that in my view, if it were under 11 40 percent, it would certainly be safe.</p> <p>12 Q. Okay. And by the same token, if it were more -- 13 if it were 60 percent or more, it would be, in 14 your evaluation, a safe Republican district?</p> <p>15 A. All other things being equal, with the same 16 clarification that anything can happen in any 17 election.</p> <p>18 Q. And you testified earlier, I believe, that you 19 typically used a 5 percent interval in making 20 the various judgments you were making, including 21 the judgments about which colors to use to 22 identify VTDs, correct?</p> <p>23 A. I wouldn't say generally all the time. I think 24 we were just talking specific to the drawing of 25 this map.</p> <p style="text-align: right;">287</p>	<p>1 interval?</p> <p>2 A. Well, of course, depending on the election and 3 who's running and what year it is, I think that 4 VTDs can be more volatile than the -- a district 5 as a whole be it a legislative district or a 6 congressional district.</p> <p>7 Q. And at some point in this process -- well, let 8 me rephrase that.</p> <p>9 After you had completed the plan and 10 presented it to Senator Rucho and Representative 11 Lewis, did you meet with -- well, strike that.</p> <p>12 Did you meet with Representative Lewis 13 and Senator Rucho and explain to them your 14 assessment of the likely partisan results of the 15 plan as a whole?</p> <p>16 A. I don't remember the exact conversations with 17 it, but I know that I did express my view about 18 the nature of the plan, yes.</p> <p>19 Q. And in that conversation did you review your 20 view as to the likely partisan result in each 21 district?</p> <p>22 A. The likely partisan results in each district, of 23 course, are very much determined on which 24 incumbents are in the district and, again, the 25 nature of the election. So if I were advising</p> <p style="text-align: right;">289</p>
<p>1 Q. Okay.</p> <p>2 A. I use those percentages sometimes. Sometimes I 3 use percentage ranges that are small, closer 4 together, sometimes farther apart, sometimes 5 less breaks. It really depends what I'm trying 6 to -- what information I'm seeing displayed on 7 the screen.</p> <p>8 Q. And when the information you wanted to see 9 displayed on the screen was a likely partisan 10 result for the district, which interval did you 11 use?</p> <p>12 A. I'm sorry. Let's try that again.</p> <p>13 MR. SPEAS: Could you read that back, 14 please.</p> <p>15 (Record Read.)</p> <p>16 THE WITNESS: Can I ask you to clarify 17 district as in complete congressional district 18 or district as in voting district.</p> <p>19 BY MR. SPEAS:</p> <p>20 Q. I mean complete congressional district.</p> <p>21 A. Well, I think I already told you that I felt 22 that those were the ranges to classify the 23 districts, again, all other things being equal.</p> <p>24 Q. Okay. What about district as in terms of a VTD 25 district or voting tabulation district, same</p> <p style="text-align: right;">288</p>	<p>1 somebody on how I thought a district would 2 perform, I would say this district is probably 3 more than likely to elect the incumbent, this 4 district the incumbent may now or in the future 5 have difficulty getting reelected.</p> <p>6 Of course, some incumbents don't run 7 again, so you always have to look at that.</p> <p>8 Q. Did you at any point ever prepare a map shading 9 districts by your view of their likely partisan 10 result?</p> <p>11 A. Not that I can remember.</p> <p>12 Q. I'm sorry?</p> <p>13 A. I said not that I can remember.</p> <p>14 Q. Might you have done that?</p> <p>15 A. I might have. I just don't remember. That's 16 been nine months. Actually, more than that.</p> <p>17 Q. And did you ever meet with Representative Lewis 18 and explain to him what you believe the likely 19 result of each district would be, partisan 20 result would be?</p> <p>21 A. Well, casting aside the fact that some districts 22 were pretty much obvious what they would be, I 23 did give him my views on the -- some of the 24 districts in the plan, the ones that weren't 25 really obvious.</p> <p style="text-align: right;">290</p>

<p>1 Q. And did you give that same information to 2 Senator Rucho? 3 A. I don't really remember whether I gave it 4 directly to Rucho or not. 5 Q. Did you at any point meet with Speaker Moore to 6 discuss about your plan? 7 A. I think as I said before, Speaker Moore -- I did 8 meet with Speaker Moore once, but I think that 9 was before the plan was finalized. It wasn't 10 after -- in the final phase of it. 11 Q. After the plan was finalized, did you meet with 12 Speaker Moore to explain to him your view of the 13 partisan results of the plan? 14 A. No. 15 Q. Did you meet with Senator Berger at any point to 16 explain to him the likely partisan results of 17 the plan? 18 A. I don't believe so, no. 19 Q. Even after -- 20 A. I just don't really remember. I don't -- I 21 don't -- I don't think I met with him after the 22 plan was completed at all. At that point it was 23 into the committee process. My job was done. 24 Q. Did you at any point meet with members of -- any 25 member of Congress --</p> <p style="text-align: right;">291</p>	<p>1 Q. Did you meet with any legislative staff member 2 in February of 2016 to discuss the formula set 3 out in Exhibit 42? 4 A. No. 5 Q. Did you meet with any legislative staff member 6 in February of 2016 to discuss your views about 7 the likely partisan impact of the plan? 8 A. I'm sorry, I didn't catch all that. 9 (Record Read.) 10 THE WITNESS: Yes, I think I already 11 answered that question. 12 BY MR. SPEAS: 13 Q. And if you could remind me, who did you -- who 14 do you recall meeting with? 15 A. Jim Blaine. 16 Q. Did you look at alternative formulas, 17 alternative to the formula in Exhibit 42, in the 18 process of developing the 2016 plan? 19 A. No. 20 Q. Did -- and Ms. Earls may have asked this. I'm 21 not sure. Let me ask it. 22 Did you consider using any other 23 elections other than the seven you used when you 24 were putting this formula together? 25 A. I did not use the presidential election results</p> <p style="text-align: right;">293</p>
<p>1 A. No. 2 Q. -- to explain your view of the partisan results 3 of the plan? 4 A. I apologize. No, I didn't. I had no contact 5 with any members of Congress. 6 Q. Did you meet with anyone from the RNC to explain 7 to them your view of the likely results of the 8 plan? 9 A. No. 10 Q. Did you meet with any legislative staff 11 members -- North Carolina legislative staff 12 members to explain to them your view about the 13 likely result of the plan? 14 A. At what time period? 15 Q. From -- in February 2016. 16 A. At any time in February? 17 Q. Yes. 18 A. Yes. 19 Q. And who did you meet with? 20 MR. FARR: I think this was covered in 21 the other deposition. 22 MR. SPEAS: If it was -- 23 THE WITNESS: It was covered in the 24 other deposition. 25 BY MR. SPEAS:</p> <p style="text-align: right;">292</p>	<p>1 because of the problem that was raised by the 2 plaintiffs in the Harris case with the use of 3 presidential election results, and I wanted to 4 avoid that -- that area of their objection even 5 though I don't think it was valid. 6 Q. You used two council state races in your 7 formula, labor and insurance, correct? 8 A. Yes. 9 Q. Did you consider using other council state 10 election results in this formula? 11 A. I may have looked at them, but I didn't choose 12 them. That's all I can really say. I didn't 13 want to get too many elections in the formula 14 anyway. It's hard enough to type into the 15 system without getting too many in there. 16 Q. And when you were deciding on the elections to 17 use in this formula, I notice that you use 18 U.S. Senate elections more than any other 19 election, correct? 20 A. That would be correct. 21 Q. And why was that? 22 A. Well, I believe there were probably more senate 23 elections in that time period than there were 24 gubernatorial elections or presidential 25 elections.</p> <p style="text-align: right;">294</p>

<p>1 Q. And I notice that you used elections from four 2 presidential election years and two from 3 non-presidential years; is that correct? 4 A. Yes. 5 Q. And was that a deliberate choice on your part? 6 A. I think there's more meaningful data in the 7 presidential election years than there were in 8 the non-presidential election years. You have 9 the governor's race -- I guess you would call it 10 the Council of State races in the presidential 11 election years. There are many less races that 12 are statewide in the non-presidential years. So 13 senate is pretty much the only one there. 14 MR. SPEAS: I think those are the 15 question I have for the moment. 16 Could we take just a short break and 17 see where we are with this other set of 18 questions. 19 THE WITNESS: Are we taking a break? 20 MR. SPEAS: Yes. 21 THE VIDEOGRAPHER: Off record at 22 2:56 p.m. 23 (Brief Recess.) 24 THE VIDEOGRAPHER: On record at 25 3:19 p.m.</p> <p style="text-align: right;">295</p>	<p>1 Q. And I am correct, I believe, that Exhibit 42 2 reflects your best estimate using all your years 3 experience generally and in North Carolina in 4 particular for identifying the elections that 5 best predict -- would best predict future 6 election results, correct? 7 MR. FARR: Objection to the form. 8 You can answer. 9 THE WITNESS: Are you talking about 10 North Carolina? 11 BY MR. SPEAS: 12 Q. Yes. 13 A. Or in general. 14 Q. Yes, North Carolina. 15 A. Actually, no, I don't think it's the best that 16 could be used. 17 Q. It's the one you used? 18 A. It is the one I used. 19 Q. And you thought it was good enough to advise 20 your clients, correct? 21 A. It wasn't -- the formula wasn't actually used to 22 advise my clients. The formula was used to 23 assist me in drafting the plan. 24 Q. To assist you in drafting the plan to make sure 25 it carried out your clients' directions,</p> <p style="text-align: right;">297</p>
<p>1 BY MR. SPEAS: 2 Q. Dr. Hofeller, two or three other questions. 3 First, you indicated that you have on 4 your computer an Excel spreadsheet that is 5 related to the estimation of partisan 6 performance. 7 Do you have any other documents on your 8 computer related to that question? 9 A. I can't recall there would be anything else I 10 would have. 11 MR. SPEAS: Tom, we would -- Tom Farr, 12 we would ask Dr. Hofeller to provide us that 13 Excel spreadsheet and to search his computer to 14 determine whether there are any other documents 15 that are related to Exhibit 42 or responsive to 16 the document request and subpoenas we previously 17 filed. 18 MR. FARR: Okay. Thanks. 19 BY MR. SPEAS: 20 Q. Dr. Hofeller, the formula in Exhibit 42 that you 21 used in preparing the congressional plan in 22 2016, could it be used to estimate the partisan 23 performance of other elections other than 24 congressional elections? 25 A. Sure.</p> <p style="text-align: right;">296</p>	<p>1 correct? 2 A. Yes, all of them. 3 Q. One -- I want to just ask you finally a couple 4 of quick questions about Exhibit 28. You might 5 want to put it in there. This is the exhibit 6 listing the election results that were on the 7 legislative database, as I understand it, in 8 2016. 9 You chose not to use the 2008 10 commissioner of labor election results and 11 instead use the 2008 commissioner of insurance 12 election results. Do you know why you chose one 13 over the other? 14 A. I don't recall. 15 Q. You chose not to use the 2012 lieutenant 16 governor election results as a part of your 17 formula. Do you recall why you did not use that 18 election? 19 A. I can answer that two ways. I can say I thought 20 I had enough -- enough contests in there 21 already, and you kind of put your -- your finger 22 on it when you produced Exhibit 43 for me 23 because it ended up with about a 50/50 result, 24 which is kind of where you want it to be. So 25 you don't want to skew one way or another way.</p> <p style="text-align: right;">298</p>

<p>1 So this produced the kind of 50/50 split that</p> <p>2 was good for determining this.</p> <p>3 Q. Okay. Is it fair to say the seven elections in</p> <p>4 Exhibit 42 reflect your best professional</p> <p>5 judgment as to the elections that should be used</p> <p>6 for this particular purpose?</p> <p>7 MR. FARR: Objection.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: You know, I'm not here to</p> <p>10 say that I have all the answers on this.</p> <p>11 Somebody else may come up with a different set</p> <p>12 of elections that they might want to use and</p> <p>13 they might have equally valid reasons for</p> <p>14 wanting to use them. It's kind of a subjective</p> <p>15 idea.</p> <p>16 What you're really looking for is</p> <p>17 something that will come up with the kind of</p> <p>18 result, again, that you came to the conclusion</p> <p>19 on on 43 which is a 50/50 result.</p> <p>20 The reason you use more than one</p> <p>21 election is because you don't want to pick up</p> <p>22 the characteristics of that election as it may</p> <p>23 pertain to one part of the state or the other</p> <p>24 part of the state because of the candidates or</p> <p>25 whatever was happening.</p> <p style="text-align: right;">299</p>	<p>1 didn't want to claim something that I --</p> <p>2 MR. FARR: We'll stipulate that Anita</p> <p>3 was not in the Harris case.</p> <p>4 MS. EARLS: I didn't want to claim</p> <p>5 credit for something I did not deserve.</p> <p>6 THE WITNESS: Have I got my cases</p> <p>7 right.</p> <p>8 MR. FARR: Harris is right.</p> <p>9 THE WITNESS: I'm sorry. I apologize.</p> <p>10 MS. EARLS: No worries.</p> <p>11 Can I mark this as Plaintiffs'</p> <p>12 Exhibit 44.</p> <p>13 (WHEREUPON, Plaintiffs' Exhibit 44 was</p> <p>14 marked for identification.)</p> <p>15 BY MS. EARLS:</p> <p>16 Q. So I've handed you what's been marked as</p> <p>17 Plaintiffs' Exhibit 44, and it's a three-page</p> <p>18 exhibit.</p> <p>19 The second page is the key. We</p> <p>20 couldn't print it out so that it came out with</p> <p>21 the map, but that's the -- shows you the</p> <p>22 intervals for the colors on the thematic.</p> <p>23 The third page shows you the elections</p> <p>24 that were used in the formula.</p> <p>25 I believe I misspoke earlier. We</p> <p style="text-align: right;">301</p>
<p>1 And you don't want to get too many</p> <p>2 elections because, I guess as I said before, if</p> <p>3 you look at that formula, Exhibit 42, it's hard</p> <p>4 enough to get that into the computer without</p> <p>5 having the computer reject it because it doesn't</p> <p>6 have a parentheses or something or a plus sign</p> <p>7 where it should be.</p> <p>8 MR. SPEAS: Thank you, Dr. Hofeller.</p> <p>9 THE WITNESS: You're welcome.</p> <p>10 MR. SPEAS: Ms. Earls.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MS. EARLS:</p> <p>13 Q. You just testified that these seven elections</p> <p>14 did not -- was not the best set of elections</p> <p>15 that you could have used. Why is that?</p> <p>16 A. Well, normally when I'm drawing districts in a</p> <p>17 state, I'll use presidential elections, but as I</p> <p>18 said before, the plaintiffs in the Harris</p> <p>19 case -- I believe you were in that case -- seem</p> <p>20 to raise an objection to using the presidential</p> <p>21 election because Obama was in it.</p> <p>22 Q. Actually, I wasn't in the Harris case, but --</p> <p>23 MR. FARR: We missed you.</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 MS. EARLS: That's quite all right. I</p> <p style="text-align: right;">300</p>	<p>1 actually did ultimately have the seven elections</p> <p>2 that we could put into the formula. And I</p> <p>3 realize that your testimony was that you used</p> <p>4 different intervals at different times, but --</p> <p>5 but this is one that you might have used.</p> <p>6 And so looking at this first page of</p> <p>7 Exhibit 44, is this roughly what the screen</p> <p>8 would have looked like if you were looking at</p> <p>9 the entire state using the formula that is in</p> <p>10 Exhibit 42?</p> <p>11 A. Of course, without being able to verify it all,</p> <p>12 if this came out right -- I would never testify</p> <p>13 to the coloring on any map that I couldn't</p> <p>14 verify myself independently. I'd be remiss as</p> <p>15 an expert if I didn't do that.</p> <p>16 It's the type of map -- it's the type</p> <p>17 of map, if you shaded the precincts according to</p> <p>18 the way you did, that you might -- might see.</p> <p>19 Q. So I understand that you're not testifying here</p> <p>20 as an expert but actually testifying as a fact</p> <p>21 witness to what you actually did as you were</p> <p>22 drawing the maps, and I'm wondering, then, if</p> <p>23 you could produce for us a screen shot that</p> <p>24 would show what you were looking at when you</p> <p>25 were using this formula.</p> <p style="text-align: right;">302</p>

<div>1MR. FARR: No. That's a question for</div> <div>2me to answer, not for Dr. Hofeller.</div> <div>3MS. EARLS: Well, I can ask him if he</div> <div>4can -- if he's capable of doing that.</div> <div>5THE WITNESS: Well, first of all, when</div> <div>6I'm drawing, I wouldn't have the whole state up</div> <div>7because, as I said before, I didn't use this</div> <div>8when I was putting in counties. And of course,</div> <div>9just because when you're seeking only to split a</div> <div>10small number of counties, there's just so many</div> <div>11ways you can combine these counties to make them</div> <div>12not work at all.</div> <div>13So when I was placing the counties</div> <div>14among the districts, I wouldn't have this map up</div> <div>15at all. Too much information.</div> <div>16BY MS. EARLS:</div> <div>17Q. Right. So we did request -- just for the</div> <div>18record, we did request that you come with your</div> <div>19computer so that we could see how this formula</div> <div>20translates into what you were looking at when</div> <div>21you were drawing the districts, and that was</div> <div>22objected to and you have not done that.</div> <div>23So my question is whether -- all we're</div> <div>24trying to get is a visual of what you were</div> <div>25looking at when you used this formula as you</div> <div>303</div>	<div>1ACKNOWLEDGEMENT OF DEPONENT</div> <div>2</div> <div>3I, THOMAS B. HOFELLER, Ph.D., declare under the</div> <div>4penalties of perjury under the State of North Carolina that</div> <div>5I have read the foregoing pages, which contain a correct</div> <div>6transcription of answers made by me to the questions therein</div> <div>7recorded, with the exception(s) and/or addition(s) reflected</div> <div>8on the correction sheet attached hereto, if any.</div> <div>9Signed this the day of , 2017.</div> <div>10</div> <div>11</div> <div>12THOMAS B. HOFELLER, Ph.D.</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>305</div>																																																			
<div>1were drawing the districts. And my question</div> <div>2right now is just is it possible, not will you</div> <div>3because that's an answer -- a question that your</div> <div>4counsel will answer, but is it possible for you</div> <div>5to produce a screen shot of what you were</div> <div>6looking at when you used this formula.</div> <div>7A. Yes, of course.</div> <div>8MR. FARR: And I would just state,</div> <div>9then, objection, which is already clear from the</div> <div>10record that he's testified several times he</div> <div>11didn't use this formula to create a map that</div> <div>12shaded the entire state.</div> <div>13MS. EARLS: I understand. Well, I just</div> <div>14actually want to see what the screen actually</div> <div>15looked like, so whether it's a single VTD or a</div> <div>16piece of a county, just an example of what it</div> <div>17looked like.</div> <div>18MR. FARR: Okay.</div> <div>19MS. EARLS: That's all I have.</div> <div>20MR. SPEAS: Thank you.</div> <div>21MR. FARR: We have no questions.</div> <div>22THE VIDEOGRAPHER: This concludes the</div> <div>23deposition. The time is 3:29 p.m.</div> <div>24[SIGNATURE RESERVED]</div> <div>25[DEPOSITION CONCLUDED AT 3:29 P.M.]</div> <div>304</div>	<div>1ERRATA SHEET</div> <div>2Case Name: Common Cause v Rucho / LWV NC v Rucho</div> <div>3Witness Name: THOMAS B. HOFELLER, Ph.D. - VOL II</div> <div>4Deposition Date: Friday, February 10, 2017</div> <div>5</div> <div>6<table><tr><th>Page/Line</th><th>Reads</th><th>Should Read</th></tr><tr><td>7</td><td>/</td><td></td></tr><tr><td>8</td><td>/</td><td></td></tr><tr><td>9</td><td>/</td><td></td></tr><tr><td>10</td><td>/</td><td></td></tr><tr><td>11</td><td>/</td><td></td></tr><tr><td>12</td><td>/</td><td></td></tr><tr><td>13</td><td>/</td><td></td></tr><tr><td>14</td><td>/</td><td></td></tr><tr><td>15</td><td>/</td><td></td></tr><tr><td>16</td><td>/</td><td></td></tr><tr><td>17</td><td>/</td><td></td></tr><tr><td>18</td><td>/</td><td></td></tr><tr><td>19</td><td>/</td><td></td></tr><tr><td>20</td><td>/</td><td></td></tr><tr><td>21</td><td>/</td><td></td></tr><tr><td>22</td><td>/</td><td></td></tr></table></div> <div>23</div> <div>24</div> <div>25SignatureDate</div> <div>306</div>	Page/Line	Reads	Should Read	7	/		8	/		9	/		10	/		11	/		12	/		13	/		14	/		15	/		16	/		17	/		18	/		19	/		20	/		21	/		22	/	
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<p>1 STATE OF NORTH CAROLINA)</p> <p>2) C E R T I F I C A T E</p> <p>3 COUNTY OF WAKE)</p> <p>4</p> <p>5 I, DENISE MYERS BYRD, Court Reporter and Notary</p> <p>6 Public, the officer before whom the foregoing proceeding was</p> <p>7 conducted, do hereby certify that the witness(es) whose</p> <p>8 testimony appears in the foregoing proceeding were duly</p> <p>9 sworn by me; that the testimony of said witness(es) were</p> <p>10 taken by me to the best of my ability and thereafter</p> <p>11 transcribed under my supervision; and that the foregoing</p> <p>12 pages, inclusive, constitute a true and accurate</p> <p>13 transcription of the testimony of the witness(es).</p> <p>14 I do further certify that I am neither counsel for,</p> <p>15 related to, nor employed by any of the parties to this</p> <p>16 action, and further, that I am not a relative or employee of</p> <p>17 any attorney or counsel employed by the parties thereof, nor</p> <p>18 financially or otherwise interested in the outcome of said</p> <p>19 action.</p> <p>20 This the 17th day of February 2017.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Denise Myers Byrd</p> <p>25 CSR 8340, RPR, CLR 102409-02</p> <p>307</p>	

Exhibit I

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, et al.,)
)
Plaintiffs,)
)
v.)
)
ROBERT A. RUCHO in his official)
Capacity as Chairman of the North)
Carolina Senate Redistricting Committee)
For the 2016 Extra Session and Co-)
Chairman of the Joint Select Committee)
on Congressional Redistricting, et al.)
)
Defendants.)
_____)

CIVIL ACTION
No. 1:16-CV-1026-WO-JEP

THREE JUDGE PANEL

League of Women Voters of North)
Carolina, et al.)
)
Plaintiffs)
)
v.)
)
ROBERT A. RUCHO in his official)
Capacity as Chairman of the North)
Carolina Senate Redistricting Committee)
For the 2016 Extra Session and Co-)
Chairman of the Joint Select Committee)
on Congressional Redistricting, et al.)
)
Defendants.)
_____)

CIVIL ACTION
No. 1:16-CV-1164-WO-JEP

THREE JUDGE COURT

SECOND DECLARATION OF THOMAS B. HOFELLER, PH.D.

I, Thomas Brooks Hofeller, under penalty of perjury, declare the following:

1. The source data for the figures, maps, and tables contained in this declaration is information received from the staff of the North Carolina General Assembly and the 2010 Decennial Census Redistricting Data File and the 2010 TIGER File received from the United States Bureau of the Census. The maps referenced were created using a GIS software package called Maptitude for Redistricting developed by Caliper Corporation located in Newton, Massachusetts.

Response to the 2016 Plan Screenshots Referenced in the Declaration of Timothy Stallmann (Exhibits 4007 – 4015)

2. The exhibits referenced in the Declaration of Timothy Stallmann (“Stallmann Declaration”) are screenshots from the Maptitude software he used to display both a statewide map (Plaintiffs’ Exhibit 4007) and eight detailed maps (Plaintiffs’ Exhibits 4008 through 4015) focusing in on some of the individual counties divided in North Carolina’s 2016 Contingent Congressional Plan (the “2016 Plan”).

3. Mr. Stallmann’s screenshots are not an accurate reflection of the screens I used in the mapdrawing process for the 2016 Plan for several reasons. First, Mr. Stallmann’s screenshot maps do not have a total population label inside each census voting tabulation district (“VTD”). It would also be impossible to draft plans without this information on the map.

4. Second, the screenshots Mr. Stallmann has presented could not have been used in the actual line-drawing process because he does not have a “pending changes” panel. The “pending changes” panel summarizes the characteristics of the geographic

units which have been selected by the mapdrawer as well as the revised characteristics of the source district and the target district with the changes incorporated. If the plan drafter then wants to accept the change, the drafter must return to the toolbox to “approve” the change.

5. Third, I did not display the VTDs when working with whole counties in the initial development of the 2016 Plan. The initial county configuration of the 2016 Plan was developed without any political data displayed on the screen. This is too much data for this part of the line-drawing process

6. Fourth, I did not display the legend panel as I would also have known the thematic color if I were displaying VTDs and it would have interfered with a full display of the map. I did, however, display it on my demonstrative screenshots referenced below for the convenience of the Court.

7. Fifth, I did not use Mr. Stallmann’s thematic colors to display election data at the VTD level when splitting counties. Plaintiffs are well aware that the thematic color display I used contained a rainbow spectrum as we discussed that fact in my deposition. The demonstrative maps I provided, which are labeled as Exhibits 5104 through 5115, show these thematic display colors. I color my maps using the rainbow spectrum which is a continuum. In contrast, Mr. Stallmann presents his data in a bi-chromatic scale, using varying tones on red and blue, which is not my practice. Mr. Stallmann’s presentation is a more polarized display method, with every VTD being either Republican (shades of red) or Democratic (shades of blue). Similarly, Plaintiffs’ Exhibits 4066-4077 which are described as the “Hofeller . . . Maptitude Screenshots” with “Red

and Blue Shading” are not accurate because I never viewed any maps on my screen using red and blue thematic shading while working on the 2016 Plan. Presumably, these screenshots were also created by Mr. Stallman for Plaintiffs as I did not create them.

8. To illustrate my testimony above, I have included a screenshot such as the one I would have used for splitting counties as a demonstrative. (See attached Figure 1). For this demonstrative, I did not use a county that was actually split in the 2016 Plan. For the counties that were split in the 2016 Plan, I created Exhibits 5104 through 5115 showing only the map portion of the screen. This allows the map to be large enough to read and is about the same size as the maps were on my monitor.

9. Finally, I note that Mr. Stallmann has produced split-counties maps for only 8 of the 13 split counties (Buncombe, Cumberland, Guilford, Johnston, Mecklenburg, Pitt, Wake and Wilson). He did not produce maps for Bladen, Catawba, Durham, Iredell and Rowan Counties, which were also split. The split-county exhibits I created, Exhibits 5104 through 5115, show all 13 split counties.

Response to Discussion of Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) in Stallman Declaration

10. Mr. Stallmann also discusses Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) introduced by Plaintiffs as trial exhibits. These are discarded maps I made that were never shown to the Chairmen of the Redistricting Committees responsible for adopting the 2016 Plan. Instead, these were my trial maps for examining possible configurations which might have been included in the 2016 Plan.

11. Exhibit 4024, identified as Map ST-B, utilizes a version of a district that runs across the southern border of the state stretching from Mecklenburg County to Cumberland County. The same potential district configuration was considered but discarded in the drafting of the 2011 Plan. Map ST-B divides Buncombe, Catawba, Durham, Forsyth, Granville, Guilford, Iredell, Jones, Mecklenburg, Nash, Orange, Rowan, Union, and Wake between two districts. It divides Cumberland County between three districts. While only dividing Mecklenburg County between two districts, District 8 is not contiguous within that county because it contains a double traversal which crosses from Cabarrus County to Mecklenburg County in two separate places.

12. Exhibit 4023, identified as Map 17A, is also a map I prepared but discarded. It has 14 county fractures. Alexander, Burke, Durham, Guilford, Jones, Nash, and Orange Counties are each split between two districts. It fractures Wake and Cumberland County between three districts and Mecklenburg County between 4 districts. In the 2016 Plan, no county is divided between more than two districts.

13. Since the Redistricting Committee Chairmen also expressed a preference against unnecessarily division of counties with small populations (under 100,000), the division of Jones County between Districts 2 and 3 in both Plans 17A and ST-B should have been moved to Pitt County.

14. Both Maps 17A and ST-B have excessive district population deviations. Map ST-B has a top-to-bottom range deviation of 5,685 persons and Map 17A's top-to-bottom range deviation is 3,533 persons. The top-to-bottom range is the difference between the highest-populated district and the lowest-populated district. In congressional

maps, that figure should be no more than one. These plans were not “zeroed out” which is further indication that they would not have been presented as viable maps to the Redistricting Committee Chairmen. A table comparing the population deviations for these plans with the population deviation of the 2011 and 2016 plans follows:

District Population Deviations From Ideal District Population

2016 Plan		2011 Enacted Plan		2016 Plan 17A		2016 Plan STB	
Dist.	Dev.	Dist.	Dev.	Dist.	Dev.	Dist.	Dev.
01	0	01	0	01	6	01	-260
02	0	02	0	02	1516	02	1477
03	-1	03	-1	03	-958	03	1023
04	0	04	0	04	-2	04	-1861
05	0	05	0	05	464	05	550
06	-1	06	-1	06	-525	06	224
07	0	07	-1	07	-2017	07	-2017
08	0	08	0	08	1001	08	-905
09	-1	09	0	09	-311	09	4208
10	0	10	-1	10	438	10	621
11	0	11	0	11	-558	11	-1699
12	-1	12	0	12	-291	12	-1285
13	0	13	0	13	1233	13	-80

Source: 2010 Decennial Census Redistricting Data File (U. S. Census Bureau).

15. Copies of these maps which more clearly show the boundaries of the districts in relation to county lines are contained in Exhibits 2004-17 and 2004-18. Mr. Stallmann’s maps of these two plans do not clearly allow an examination of the district borders in relation to the county boundaries.

Incumbent Placement in the 17A and ST-B Maps

16. Map 17A would have triple-bunked Congressmen Butterfield, Jones, and Rouser in District 2. It would have double-bunked Congresswoman Foxx and Congressman Walker in District 5. This would have left Districts 3, 7, and 9 vacant.

17. Map ST-B would have triple-bunked Congressmen Butterfield, Jones, and Rouser in District 2. It would have double-bunked Congressmen Hudson and Pittenger in District 9. It would have left Districts 3, 7, and 12 vacant.

Response to 20-election contest set used by Mr. Stallmann to Analyze 17A and ST-B Maps

18. Mr. Stallmann's analyses of the 17A and ST-B Maps uses 20 past statewide election contests to compute the political characteristics while I used only seven statewide contests. Only this seven statewide contest analysis was used to analyze the 2016 Plan. While the development of the 2016 Plan was underway, the North Carolina General Assembly's Information Service staff prepared a statistical package (called a "stat-pack") which would be used to present the information on the 2016 Plan to the redistricting committees and the full membership of both chambers of the General Assembly. I worked with the legislative staff and the Redistricting Chairmen to determine what political election statistics would be presented.

19. Both the 20-election and seven-election analyses used an extremely simple algebraic formal to develop a single percentage which show the political characteristics of individual VTDs or whole plans. Formulae such as these have been used in

redistricting since the 1970s and do not require a large portion of the resources of today's high-powered computers to generate.

20. The 20-contest formula explained in Mr. Stallmann's declaration is, in reality, quite simple. The votes for the Republicans running in the 20 statewide contests are summed. This is the Aggregate Republican vote. Then, the votes for both the Republicans and Democrats running for in the 20 statewide contests are summed and averaged. This is the Aggregate Two-Party Vote. Then, the Aggregate Republican Vote is divided by the Aggregate Two-Party Vote yielding a decimal value, which is multiplied by 100 to convert it into a percentage called the Average Aggregate Republican Vote. I used the same process using only the seven election contests I selected to construct and analyze the 2016 Plan.

21. I compared the aggregate statewide average vote for the 20 election contests used by Mr. Stallmann with the aggregate statewide average for the seven election contest that I used. The average aggregate statewide vote for the 20 election contests used by Mr. Stallmann is 51.42% for the Democrats and 48.58% Republicans. The average aggregate statewide vote for the seven election contests I used is 49.28% for the Democrats and 50.72% Republicans. This means that, on a statewide basis, the 20-contest index used by Mr. Stallmann is 2.14% more favorable for the Democrats. The seven-contest statewide average I used is closer to a 50-50 split for the two parties.

22. Each district in the maps in Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) is labeled with a district number and the corresponding 20-contest score. Using the more balanced seven-contest analysis I used, I prepared the table below which

contains the Republican percentages for 2011 and 2016 Plans along with the Republican percentages for Maps 17A and ST-B:

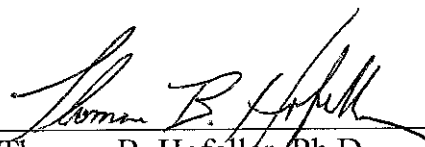
**2011 and 2016 Congressional Plans Compared to 17A and ST-B Maps
Using Seven Statewide Election Contests (Hofeller)**

Contingent Plan		2011 Enacted Plan		2016 Plan 17A		2016 Plan STB	
Dist.	% Rep.	Dist.	% Rep.	Dist.	% Rep.	Dist.	% Rep.
01	31.20%	1	27.59%	01	27.90%	01	28.00%
02	55.63%	13	55.74%	02	49.50%	02	49.50%
03	55.04%	3	54.91%	03	50.50%	03	50.40%
04	37.02%	4	29.59%	04	51.90%	04	54.30%
05	55.71%	5	58.58%	05	54.50%	05	55.60%
06	54.41%	6	56.76%	06	51.60%	06	55.70%
07	53.68%	7	56.14%	07	50.50%	07	50.50%
08	54.94%	8	56.93%	08	53.90%	08	56.70%
09	55.72%	9	60.53%	09	57.20%	09	57.40%
10	57.95%	10	57.50%	10	54.10%	10	56.80%
11	57.08%	11	58.23%	11	52.60%	11	58.30%
12	36.18%	12	23.62%	12	53.90%	12	30.30%
13	53.51%	2	56.50%	13	50.50%	13	50.70%

DECLARATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

This 26th day of October, 2017.


 Thomas B. Hofeller, Ph.D.

31754670.1

FIGURE 1

TYPICAL MAPTITUDE SCREEN (HOFELLER)

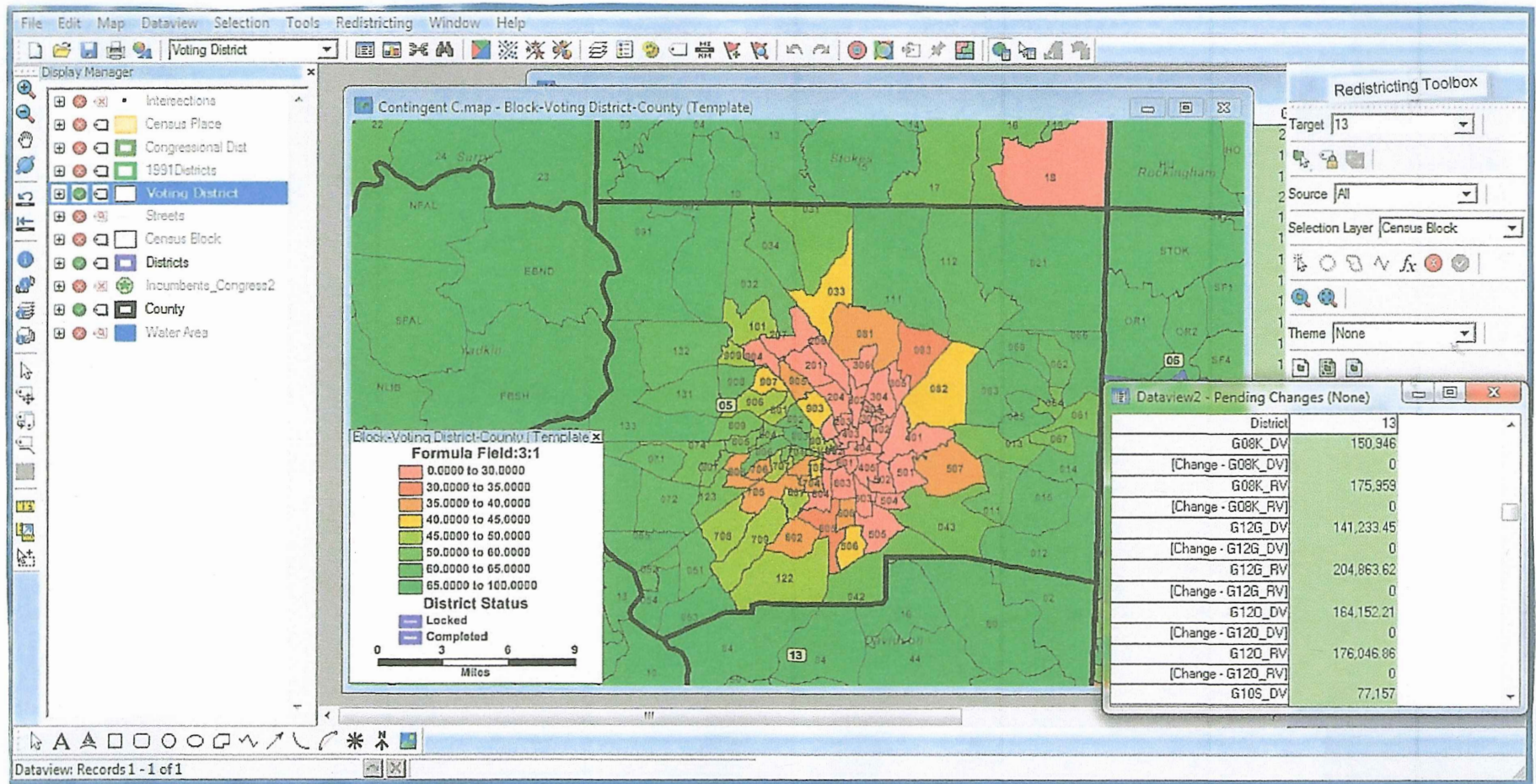


Exhibit J

<p>IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA</p> <p>COMMON CAUSE, et al.,)) Plaintiffs,) vs.) Civil Action No.)) 1:16-CV-2016-WO-JEP</p> <p>ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) Joint Select Committee on) Congressional Redistricting,) et al.,)) Defendants.))</p> <p>LEAGUE OF WOMEN VOTERS OF NORTH) CAROLINA, et al.,)) Plaintiffs,) vs.) Civil Action No. 1:16-CV-1164</p> <p>ROBERT A. RUCHO, in his official) capacity as Chairman of the North) Carolina Senate Redistricting) Committee for the 2016 Extra) Session and Co-Chairman of the) 2016 Joint Select Committee on) Congressional Redistricting,) et al.,)) Defendants.)))</p> <p>VIDEOTAPED DEPOSITION OF SENATOR ROBERT A. RUCHO</p> <hr/> <p>9:40 A.M. WEDNESDAY, JANUARY 25, 2017</p> <hr/> <p>POYNER SPRUILL 301 FAYETTEVILLE STREET, SUITE 1900 RALEIGH, NORTH CAROLINA</p>	<p>1</p> <p>2 NC DEPARTMENT OF JUSTICE</p> <p>3 BY: ALEC PETERS, ESQ.</p> <p>4 JAMES BERNIER, JR., ESQ.</p> <p>5 PO Box 629</p> <p>6 Raleigh, NC 27602</p> <p>7 (919) 716-6400</p> <p>8 APeters@ncdoj.gov</p> <p>9 JBernier@ncdog.gov</p> <p>10</p> <p>11 Also Present: Representative David Lewis</p> <p>12 Alesha Brown, SCSJ</p> <p>13</p> <p>14 The Reporter: Discovery Court Reporters</p> <p>15 and Legal Videographers, LLC</p> <p>16 BY: DENISE MYERS BYRD, CSR 8340</p> <p>17 BRENT TROUBLEFIELD,</p> <p>18 VIDEOGRAPHER</p> <p>19 4208 Six Forks Road, Suite 1000</p> <p>20 Raleigh, NC 27609</p> <p>21 (919) 424-8242</p> <p>22 (919) 649-9998 Direct</p> <p>23 Denise@DiscoveryDepo.com</p> <p>24</p> <p>25 --o0o--</p> <p>INDEX OF EXAMINATION</p> <p>Page</p> <p>By Ms. Mackie..... 6</p> <p>By Ms. Riggs..... 156</p> <p>--o0o--</p>
<p>1 APPEARANCES</p> <p>2</p> <p>3 For the Plaintiffs: Common Cause, et al.</p> <p>4 BONDURANT MIXSON & ELMORE</p> <p>5 BY: EMMET J. BONDURANT, ESQ.</p> <p>6 BENJAMIN W. THORPE, ESQ.</p> <p>7 1201 W. Peachtree Street, NW</p> <p>8 Suite 3900</p> <p>9 Atlanta, GA 30309</p> <p>10 (404) 881-4100</p> <p>11 Bondurant@bmelaw.com</p> <p>12 BThorpe@bmelaw.com</p> <p>13</p> <p>14 POYNER SPRUILL</p> <p>15 BY: CAROLINE P. MACKIE, ESQ.</p> <p>16 301 Fayetteville Street</p> <p>17 Suite 1900</p> <p>18 Raleigh, NC 27601</p> <p>19 (919) 783-1140</p> <p>20 ESpeas@poynerspruill.com</p> <p>21 CMackie@poynerspruill.com</p> <p>22</p> <p>23 For the Plaintiffs: League of Women Voters, et al.</p> <p>24</p> <p>25 SOUTHERN COALITION FOR</p> <p>SOCIAL JUSTICE</p> <p>BY: ALLISON RIGGS, ESQ.</p> <p>1415 Highway 54</p> <p>Suite 101</p> <p>Durham, NC 27707</p> <p>(919) 323-3380 x 115</p> <p>AnitaEarls@southerncoalition.org</p> <p>AllisonRiggs@southerncoalition.org</p> <p>For the Defendants:</p> <p>OGLETREE DEAKINS NASH SMOAK</p> <p>BY: THOMAS A. FARR, ESQ.</p> <p>PHILLIP J. STRACH, ESQ.</p> <p>4208 Six Fork Road</p> <p>Suite 1100</p> <p>Raleigh, NC 27609</p> <p>(919) 787-9700</p> <p>Thomas.Farr@ogletreedeakins.com</p> <p>Phil.Strach@Ogletreedeakins.com</p>	<p>1 INDEX OF EXHIBITS</p> <p>2 EXHIBIT NO. DESCRIPTION Page</p> <p>3 32 Plaintiffs' Notice of Rescheduled</p> <p>4 Deposition of Robert A. Rucho 8</p> <p>5</p> <p>6 33 Binder: Public Hearing Transcripts 50</p> <p>7</p> <p>8 34 Binder: Committee Transcripts 70</p> <p>9</p> <p>10 35 Defendants' Responses to Plaintiffs'</p> <p>11 First Set of Interrogatories and</p> <p>12 Requests for Production of Documents 74</p> <p>13</p> <p>14 36 Binder: Senate Floor Transcripts 143</p> <p>15</p> <p>16 37 General Assembly of NC, Fourth Extra</p> <p>17 Session 2016, Session Law 2016-125</p> <p>18 Senate Bill 4 146</p> <p>19</p> <p>20 38 Letter from Robin Hayes, RSLC 152</p> <p>21</p> <p>22 --o0o--</p> <p>23</p> <p>24</p> <p>25</p>

<p>1 THE VIDEOGRAPHER: On record at 2 9:40 a.m. Today's date is January 25, 2017. 3 This is the videotaped deposition of 4 Robert Rucho taken in the matter of Common 5 Cause, et al., plaintiffs, versus Robert A. 6 Rucho, et al., defendants, in the United States 7 District Court for the Middle District of 8 North Carolina, Civil Action 116-cv-1026-WOJ-EP. 9 Also in the matter of League of Women 10 Voters of North Carolina, et al., plaintiffs, 11 versus Robert A. Rucho, et al., defendants, in 12 the United States District Court for the Middle 13 District of North Carolina, Civil Action 14 116-CV-1164. 15 Would counsel please now introduce 16 themselves. 17 MS. MACKIE: Caroline Mackie on behalf 18 of Common Cause. 19 MS. RIGGS: Allison Riggs from the 20 Southern Coalition for Social Justice on behalf 21 of the League of Women Voters, plaintiffs. 22 MR. BONDURANT: Mr. Bondurant. I 23 represent Common Cause and the Common Cause 24 plaintiffs. 25 MR. THORPE: Ben Thorpe representing</p> <p>5</p>	<p>1 Q. How are you employed? 2 A. Presently retired. 3 Q. Congratulations. When did your term as senator 4 end? 5 A. The 31st of December '16. 6 Q. And you are not engaged in any other employment 7 right now? 8 A. You mean presently? 9 Q. Right. 10 A. Just retired. 11 Q. No longer practicing orthodontics? 12 A. No. Dentistry. No. 13 Q. Dentistry. I'm sorry. 14 Senator, are you waiving your 15 legislative privilege today for the matters 16 we're going to discuss? 17 MR. FARR: He's waiving his legislative 18 privilege for matters related to the 2016 19 Congressional Plan or the 2011 Congressional 20 Plan. 21 MS. MACKIE: Thank you. 22 THE WITNESS: That's what I'm doing. 23 BY MS. MACKIE: 24 Q. Thank you. 25 I'm going to hand you a document which</p> <p>7</p>
<p>1 Common Cause plaintiffs. 2 MR. PETERS: Alec Peters with the 3 Attorney General's Office on behalf of the 4 defendants. 5 MR. BERNIER: Assistant Attorney 6 General James Bernier, Jr., on behalf of the 7 defendants. 8 MR. OLDHAM: Dalton Oldham on behalf of 9 the General Assembly. 10 MR. STRACH: Phil Strach with Ogletree 11 Deakins on behalf of the defendants. 12 MR. FARR: Tom Farr with the Raleigh 13 office of Ogletree Deakins, and I'm here on 14 behalf of the defendants and Senator Rucho. 15 ROBERT A. RUCHO, 16 having been first duly sworn or affirmed by the 17 Certified Shorthand Reporter and Notary Public 18 to tell the truth, the whole truth and nothing 19 but the truth, testified as follows: 20 EXAMINATION 21 BY MS. MACKIE: 22 Q. Good morning, Senator. Can you state your name 23 and address for the record. 24 A. Robert Anthony Rucho, 305 Trafalger Place in 25 Matthews, North Carolina.</p> <p>6</p>	<p>1 we will mark as Exhibit 32. 2 (WHEREUPON, Plaintiffs' Exhibit 32 was 3 marked for identification.) 4 BY MS. MACKIE: 5 Q. Have you seen this document before? 6 A. I can't recall it. In speaking with our 7 attorneys, I knew that I was to attend this 8 deposition, but I don't remember receiving this 9 specifically. 10 Q. Okay. If you will turn to the second to last 11 page, the top says Exhibit A. Have you seen 12 this part of the document before? 13 A. I don't recall that. 14 Q. Okay. And if you will turn to the last page 15 under that heading that says "List of Documents 16 and Things to be Produced." 17 And same question: Have you seen that 18 list before? 19 A. Again, I don't recall. 20 Q. Did anyone tell you that you should produce 21 documents for today's deposition? 22 A. I believe that Andrew Tripp, who is the attorney 23 for Senator Berger, responded through my staff 24 for this, any request that was there. 25 Q. When do you -- when did he do that?</p> <p>8</p>

<p>1 A. When -- I assume when it all came about. That's</p> <p>2 my recollection. I could be in error, but</p> <p>3 that's all I recall.</p> <p>4 Q. I'm sorry. Do you know if he re-sent it to you?</p> <p>5 A. I do not.</p> <p>6 Q. Do you know --</p> <p>7 A. It would have been -- if they were looking for</p> <p>8 e-mails or calendar, it would have probably gone</p> <p>9 to my legislative assistant who would have tried</p> <p>10 to identify it if it was at all possible.</p> <p>11 Q. And who is your legislative assistant?</p> <p>12 A. Let me try to remember now. They left me a few</p> <p>13 months ago. Oh, gracious. I'm not sure I</p> <p>14 recall directly, but I can get that for you if</p> <p>15 you give me a chance to remember.</p> <p>16 Q. Is it male or female?</p> <p>17 A. Male.</p> <p>18 Q. And is he still employed by the General</p> <p>19 Assembly?</p> <p>20 A. Yes.</p> <p>21 MR. FARR: Caroline, can I clarify</p> <p>22 something?</p> <p>23 MS. MACKIE: Sure.</p> <p>24 MR. FARR: There was a search conducted</p> <p>25 for Items 1 and 2, and any versions of the</p> <p style="text-align: right;">9</p>	<p>1 adjusted. I know that we made some minor</p> <p>2 changes because of address changes and things of</p> <p>3 that sort, but the things that he did, he have</p> <p>4 worked on the state computer at that time, I'm</p> <p>5 sure.</p> <p>6 Q. Okay. How do you keep a calendar?</p> <p>7 A. At that time it would have been on my iPhone.</p> <p>8 It would have been on the computer in my</p> <p>9 legislative office at that time, but I was just</p> <p>10 trying to -- if I could get it lined up, I would</p> <p>11 try to be at the right place when I was supposed</p> <p>12 to be.</p> <p>13 Q. And when you say "that time," do mean</p> <p>14 February 25, 2016, through January 10, 2017?</p> <p>15 A. When I was a senator, yes, ma'am.</p> <p>16 Q. Okay. Was your iPhone a personal iPhone or was</p> <p>17 it a legislative --</p> <p>18 A. My personal.</p> <p>19 Q. Do you still have that phone?</p> <p>20 A. I do.</p> <p>21 Q. Okay. And what about after your term ended as a</p> <p>22 senator?</p> <p>23 A. I would work -- I'd be doing my own scheduling</p> <p>24 so it would be on my iPhone.</p> <p>25 Q. Okay. So if we would need you to search your</p> <p style="text-align: right;">11</p>
<p>1 congressional plan would have been produced by</p> <p>2 Dr. Hofeller.</p> <p>3 And the search was unable to uncover</p> <p>4 any calendars for Senator Rucho showing when he</p> <p>5 met with the people listed in Item Number 2.</p> <p>6 MS. MACKIE: Okay.</p> <p>7 BY MS. MACKIE:</p> <p>8 Q. Senator, let me point you to Number 1 on that</p> <p>9 list. Are you aware of any congressional plans</p> <p>10 that were drawn on the legislative computer?</p> <p>11 A. The one that I'm aware of was submitted by</p> <p>12 Dr. Hofeller at the request of Representative</p> <p>13 Lewis and myself in time for us to bring it</p> <p>14 before the General Assembly for passage and then</p> <p>15 be able to send the enacted or the passed plan</p> <p>16 on to the Court as requested or required.</p> <p>17 Q. So you are not aware of versions of the</p> <p>18 congressional plan in 2016 that were drawn on a</p> <p>19 legislative computer? Am I understanding --</p> <p>20 A. Just the ones that would have been done by</p> <p>21 Dr. Hofeller.</p> <p>22 Q. So only on his computer?</p> <p>23 A. Well, he might have made some changes on the</p> <p>24 state employee -- the state computer after the</p> <p>25 time he submitted the plan as it was being</p> <p style="text-align: right;">10</p>	<p>1 calendar for any meetings that satisfy this</p> <p>2 request, you could do that?</p> <p>3 MR. FARR: And it has been done.</p> <p>4 THE WITNESS: We would have looked at</p> <p>5 it, yes, ma'am, and --</p> <p>6 BY MS. MACKIE:</p> <p>7 Q. Did you personally search your iPhone calendar?</p> <p>8 A. Looking back, the -- and I don't know very much</p> <p>9 about iPhones, nor do I know much about</p> <p>10 computers, unfortunately, but after a period of</p> <p>11 time it just erases off the -- off the iPhone,</p> <p>12 you know, going back six, eight months, I think,</p> <p>13 at least that's what it appears because I can't</p> <p>14 find anything on there.</p> <p>15 Q. So you did search --</p> <p>16 A. Yes.</p> <p>17 Q. -- for meetings with Phil Berger, Tim Moore or</p> <p>18 any member of the Ogletree law firm on your</p> <p>19 calendar?</p> <p>20 A. Yes.</p> <p>21 Q. Did anybody assist you with that search?</p> <p>22 A. Again, it would have been handled -- and I think</p> <p>23 I'm correct that Andrew Tripp would have</p> <p>24 assisted us with this, trying to make sure that</p> <p>25 we complied with your request.</p> <p style="text-align: right;">12</p>

<p>1 Q. So did you turn over your cell phone to Andrew 2 Tripp?</p> <p>3 A. No. It would have been my job to do that.</p> <p>4 Q. So did you personally search?</p> <p>5 A. I did look through it, yes, ma'am, to try to 6 identify if there were meetings that were 7 described for, let's say, Senator Berger or, who 8 else, Tim Moore and Ogletree Deakins.</p> <p>9 Q. And is it your testimony that nobody assisted 10 you on that search of your iPhone calendar?</p> <p>11 A. On my iPhone, it would have been just me.</p> <p>12 Q. Senator, what did you do to prepare for your 13 deposition today?</p> <p>14 A. I read back on a number of -- let's say the 2011 15 redistricting map for the Congressional 16 districts, read -- I just basically tried to 17 refresh as much as I could.</p> <p>18 It's -- going back to 2011, it's kind 19 of hard to remember all the things that went on 20 at that time, especially congressional, 21 legislative and all of the things in addition to 22 doing legislative work, but just tried to get 23 briefed up as to the, let's say, senate -- 24 joint -- joint House and Senate Committee 25 meeting, read the minutes of it, of course, the</p> <p style="text-align: right;">13</p>	<p>1 A. -- and describe it.</p> <p>2 But, yes, we went there through 3 there -- I went through there trying to 4 remember -- along with the minutes remember what 5 and why we added all of those into place and 6 just refresh my memory as to how I prepared at 7 that time to enact or to pass the contingent 8 map.</p> <p>9 Q. My question is: Did you review a document that 10 says on its face that your goal was to comply 11 with the court order?</p> <p>12 A. No. That was the goal. The criteria is what 13 I -- is what I reviewed. The goal was always to 14 comply with the order. We had no alternative 15 there. So that was the goal, and the criteria 16 was how we tried to achieve it.</p> <p>17 Q. Did you meet with Dr. Hofeller to prepare for 18 your deposition?</p> <p>19 A. He was present when -- when I had a chance to go 20 over these documents or talking about them, if I 21 had any questions about it or the like.</p> <p>22 Q. And when was that meeting?</p> <p>23 A. I think -- I think it was last Wednesday.</p> <p>24 Q. Who else was present?</p> <p>25 A. The attorneys, Representative Lewis, again, the</p> <p style="text-align: right;">15</p>
<p>1 floor debate in the senate, the Redistricting 2 Committee meeting, trying to refresh my memory 3 where I could.</p> <p>4 Q. Did you review the 2016 map?</p> <p>5 A. I did look back at it to try to identify it, and 6 I did look at the material that we distributed 7 to the committee members dealing with the 8 criteria that was established.</p> <p>9 And what our goal was is to, in a very 10 short period of time, comply with the court 11 order on redrawing the congressional maps even 12 though we believed, and I believe today, that 13 the original 2011 enacted maps were 14 constitutional, and I anticipate the courts 15 responding to that appropriately, but just 16 refreshing my memory on the '16 events.</p> <p>17 Q. Did you review documents that stated your 18 criteria as you just described it, that your 19 goal was to comply with the court order in a 20 short period of time?</p> <p>21 A. Yes ma'am. I went ahead and went through the 22 criteria. I'm not going to sit and try to 23 repeat it to you. If you want me to, just give 24 me one of those --</p> <p>25 Q. We'll get there.</p> <p style="text-align: right;">14</p>	<p>1 other attorney would also be Brent Woodcox.</p> <p>2 Q. Who is Brent Woodcox?</p> <p>3 A. He is the legislative -- the legal counsel for 4 the Redistricting Committee and also an attorney 5 for the General Assembly.</p> <p>6 Q. Was he previously your attorney, or did he work 7 in your office previously?</p> <p>8 A. Yes, ma'am. He helped us with the 9 redistricting.</p> <p>10 Q. In 2011?</p> <p>11 A. '11 and '16.</p> <p>12 Q. And you were here all day yesterday for 13 Dr. Hofeller's deposition?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. I think we'll be shorter today.</p> <p>16 A. Thank God.</p> <p>17 Q. Senator, when were you first elected to the 18 legislature?</p> <p>19 A. I think it was in 1997.</p> <p>20 Q. Was that to the Senate?</p> <p>21 A. In the Senate, yes, ma'am. I was there from 22 1997 until 2004, took a three-and-a-half to 23 four-year sabbatical and then returned back in 24 the Senate again.</p> <p>25 Q. So you returned in 20 -- elected --</p> <p style="text-align: right;">16</p>

<p>1 A. I think it was June of '06 I took Senator 2 Pittenger's unexpired term, and then when I was 3 reelected in the primary, so and then I finished 4 up, as I said to you, 2016 December 31st. 5 Q. How many terms did you serve? 6 A. I believe it's eight -- an eight and a plus. 7 Q. And that 2006 year would be the plus? 8 A. (Witness nodding head up and down.) 9 Q. Yes? 10 A. Yes, ma'am. 11 Q. Thank you. 12 In 2011 were you appointed chair of the 13 Senate Redistricting Committee? 14 A. Yes, ma'am. 15 Q. Who appointed you? 16 A. Senator Berger. 17 Q. How many times were you reappointed as chair of 18 that committee? 19 A. Just the one time. We -- it was 2011, and I've 20 been the chair of it ever since. 21 Q. So it was continuous? 22 A. No one else would take the job. 23 Q. And Representative Lewis was appointed chair of 24 the House Redistricting Committee at the same 25 time?</p> <p style="text-align: right;">17</p>	<p>1 A. Yes, ma'am. The Dixon v Rucho and -- and then 2 the -- 3 Q. Harris v McCrory. 4 A. The Harris case. 5 Q. And did you testify in both of those cases 6 through affidavits and depositions? 7 A. I did in the Dixon-Rucho case. I testified both 8 in affidavit and also before Judge Ridgeway's 9 three-judge panel. And also -- I think it was 10 just an affidavit in the Harris case. I don't 11 think I ever testified in court. 12 Q. Did you have your deposition taken in the Harris 13 case? 14 A. All I can say is I believe that's accurate. 15 Q. Okay. To the best of your recollection, was 16 your testimony in both of those cases accurate? 17 A. Yes. 18 Q. And are you -- sitting here today, are you aware 19 of any testimony that you gave in those cases 20 that is not accurate? 21 A. No. 22 Q. You testified in those cases that Dr. Hofeller 23 was the architect of the congressional plan? 24 A. "The architect" has been misused, should I say. 25 In reality -- and I tried to explain this I</p> <p style="text-align: right;">19</p>
<p>1 A. Yes, ma'am. 2 Q. And who appointed him? 3 A. I believe Speaker Tillis at that time. 4 Q. In 2011. Okay. 5 I want to talk about the 2011 6 Congressional Plan. Were you and Representative 7 Lewis responsible for the enactment of that 8 plan? 9 MR. FARR: Objection to the form. 10 THE WITNESS: Representative Lewis and 11 I by being chairs of the committee were 12 responsible to bring a plan before the General 13 Assembly through the process -- the formal 14 process of committees and debate and the like 15 and then pass it with the principal goal of 16 getting the 2011 plan pre-cleared by the Justice 17 Department so that it can be ready for the next 18 election, and I believe it was 2012. 19 BY MS. MACKIE: 20 Q. You were a defendant in two lawsuits over that 21 plan, right? 22 A. I may have lost count as to the number of 23 lawsuits, but at least two. 24 Q. Over the congressional plan, do you recall the 25 Dixon case?</p> <p style="text-align: right;">18</p>	<p>1 think in another deposition, but clearly stating 2 that my idea of an architect is someone -- if 3 I'm building a house and I am hiring someone 4 with knowledge in a certain area and I'm the 5 owner, I'm going to tell them what they need to 6 do and then they put it on paper to get it done. 7 So the term "architect" clearly is 8 someone that will assist us -- at this time 9 Representative Lewis and myself -- in pretty 10 much following our guidelines and what we told 11 them to do and what we wanted, and that was the 12 role of Dr. Hofeller in, quote, unquote, being 13 "the architect." 14 Q. Dr. Hofeller was hired by Ogletree Deakins for 15 the 2011 plan; is that right? 16 A. I believe you're right. 17 Q. And he was not hired to work with the 18 redistricting committee in 2011? 19 A. I think he was hired to work with Representative 20 Lewis and myself as far as putting together a 21 plan that would be presented to the 22 redistricting committee. I think I'm accurate 23 in that statement. 24 Q. Did he appear before the committee? 25 A. No.</p> <p style="text-align: right;">20</p>

<p>1 Q. Were you in attendance at the Harris trial in 2 Greensboro in October of 2015? 3 A. Yes, ma'am. 4 Q. Were you there for the entire trial? 5 A. Four days' worth. 6 Q. Was Representative Lewis there? 7 A. He was present at periods during that -- during 8 the court hearing. 9 Q. Was Dr. Hofeller there? 10 A. Yes. 11 Q. Was Mr. Oldham there? 12 A. I believe he was. 13 Q. At the end of that trial, did you form an 14 opinion about what the court was likely to do? 15 A. Can you explain what you mean by that. I'm not 16 sure I understand the question. 17 Did I form an opinion? 18 Q. Yes. Did you have any suspicion or guess as to 19 what the court might decide on Congressional 20 Districts 1 and 12? 21 A. Well, yes, I did, and I'll clarify why. I sat 22 through that case and, of course, I was -- I sat 23 through all of the Dixon versus Rucho in the 24 state level court, and the evidence was clear 25 that there was never a negative comment about</p> <p style="text-align: right;">21</p>	<p>1 question, but that's fine. 2 THE WITNESS: I don't recall that. I 3 don't recall whether he did. I don't think so, 4 but -- 5 BY MS. MACKIE: 6 Q. But at the end of the trial you felt the court 7 would affirm the constitutionality of 8 Congressional Districts 1 and 12? 9 A. Yes, ma'am, because we followed the law. 10 Q. Did you have any discussions with Senator Berger 11 about the trial? 12 A. As a committee chairman, I would report back to 13 Senator Berger as to what was going on. And, of 14 course, I would have explained to him what I 15 experienced there as representing the General 16 Assembly as chairman of the Senate Redistricting 17 Committee, explaining to him what I thought 18 occurred. 19 Of course, I'm sure with the media 20 coverage and the like Senator Berger was well 21 aware of what transpired, but I did explain what 22 I thought went on. 23 Q. Did you have conversations with other 24 legislators about the Harris trial? 25 A. Only when people would have asked me, but</p> <p style="text-align: right;">23</p>
<p>1 the fact that racially polarized voting existed 2 in North Carolina. Both plaintiff and 3 defendants had expert testimony. I remember 4 during the public hearing the attorney for the 5 NAACP said that, Ms. Earls said that as part of 6 all the evidence and testimony that was set 7 forth, and I was very surprised that the court 8 ignored that. 9 Actually, there was one other thing 10 that kind of added to that, and actually 11 Representative Butterfield, who was the 12 congressman from the CD 1, actually testified 13 that, you know, with his experience having been 14 the congressman there that there is indeed 15 racially polarized voting in CD 1, and to have 16 the court totally ignore that and make a 17 decision that contradicted the constitution, 18 contradicted the legal precedent was a 19 tremendous surprise to me. So I was extremely 20 surprised at their decision to ignore the 21 evidence as it was presented. 22 Q. And you did not testify in that trial? 23 A. No. 24 Q. Did Representative Lewis testify? 25 MR. FARR: Object to the form of the</p> <p style="text-align: right;">22</p>	<p>1 that's -- I can't remember specifics. 2 Q. Following the trial, the end of the trial and 3 the decision of the court in February of 2016, 4 did you have any conversations with Senator 5 Berger about redrawing the 2011 Congressional 6 Plan? 7 A. Okay. Say that one more time with your 8 question. 9 Q. Sure. Between the end of the Harris trial in 10 October of 2015 and the date that the decision 11 came out from the Harris court in February of 12 2016, did you and senator Berger have 13 conversations about redrawing the 2011 14 Congressional Plan? 15 MR. FARR: And I'm going to just 16 instruct you on something, Senator Rucho, and 17 this is based upon a position taken by the 18 Attorney General in other cases that I've read. 19 You've waived your legislative privilege so you 20 can answer her question as to what you may have 21 said, but Senator Berger and other legislators 22 have not waived their legislative privilege. 23 You have no right to waive their legislative 24 privilege for them. 25 Therefore, I instruct you not to answer</p> <p style="text-align: right;">24</p>

<p>1 any questions about what Senator Berger or any 2 other legislator said to you. 3 BY MS. MACKIE: 4 Q. To be clear, the question was just did you have 5 conversations. So that was the first -- 6 A. Repeat that question one more time. 7 MR. FARR: I heard it. I just wanted 8 everyone to know where we were going with this. 9 BY MS. MACKIE: 10 Q. The question is: Did you and Senator Berger 11 have any discussion between October of 2015 and 12 February of 2016 about redrawing the 2011 13 Congressional Plan? 14 A. I don't recall having any discussions about 15 redrawing it because I never anticipated losing 16 and having the court consider the maps 17 unconstitutional on CD 1 and CD 12. 18 Q. So you did not plan to be redrawing the 19 congressional plan? 20 A. I followed the law and that is -- I saw no 21 reason why that would ever be challenged by the 22 court, especially after the fact that the 23 Ridgeway court in the district court in 24 North Carolina unanimously found them all to be 25 constitutional. So I could never understand why</p> <p style="text-align: right;">25</p>	<p>1 A. Harris and McCrory, right? 2 Q. Yes. 3 A. Well, I had interest in it. 4 Q. What did you do after you got that phone call? 5 A. Probably tried to contact our counsel to try to 6 get an understanding as to what indeed it meant 7 and, more importantly, what would be required of 8 us to comply with what they -- what the opinion 9 said. 10 Q. You said you probably called your counsel. Do 11 you have recollection? 12 A. As best I can recollect, because I would have 13 needed to understand what the responsibilities 14 would be for the redistricting effort to comply 15 with the Harris court order. 16 Q. Did you make that phone call that evening on 17 Friday? 18 A. As soon as I found out about the decision, so 19 sometime during that evening. It was -- my 20 recollection it was somewhere after 5:00 or 6:00 21 on Friday. 22 Q. What did you do after that, after you'd spoke 23 with your counsel? 24 A. I believe we tried to find a time to meet. Now, 25 that would have been the 5th, 6th either by</p> <p style="text-align: right;">27</p>
<p>1 the federal court would have even had a question 2 about it. 3 Q. Let's talk about the day that the decision came 4 out, February 5, 2016. Does that sound right? 5 A. Late in the afternoon. 6 Q. On a Friday afternoon? 7 A. Yes, ma'am. 8 Q. When did you find out about the opinion? 9 A. I think I got a phone call or a reporter or 10 somebody might have called me and said, "Well, 11 what do you think about this," and I said at 12 that point "I don't know yet because I 13 haven't" -- this is the first I had heard of it, 14 but I think that's probably when I might have 15 got notified of it. 16 Q. So you first learned about the decision from a 17 reporter? 18 A. Yes, ma'am. 19 Q. Who was that reporter? 20 A. They're very quick. Oh, I can't remember. They 21 asked a question whenever, something like that, 22 and they always call me because I'm the senate 23 redistricting chair. 24 Q. And you were a party to that decision or to that 25 case, right?</p> <p style="text-align: right;">26</p>	<p>1 meeting in person or phone. I couldn't remember 2 exactly if I made the trip into Raleigh or I was 3 on a phone call, but trying to understand what 4 we needed to do to comply with the order. 5 Q. When did you meet either by phone or by person? 6 A. As best I can recollect, it might have been the 7 Saturday following Friday, and I think I'm 8 accurate in that. 9 Q. Who was present? 10 A. I believe I was on the phone call, so I can't 11 remember exactly who might have been there other 12 than the attorneys and potentially 13 Representative Lewis. So I would have been 14 there just listening, and that's the best I can 15 remember on that because I don't remember coming 16 to Raleigh on that Saturday. 17 Q. Was Dr. Hofeller there? 18 A. I don't remember that. 19 Q. Were the others, as best you remember, together 20 in person in Raleigh and you called in from 21 Charlotte? 22 A. It would have been from Matthews. 23 Q. Matthews. I'm sorry? 24 A. It's different than Charlotte. And I can't 25 speak to that because there could have been some</p> <p style="text-align: right;">28</p>

<p>1 other people on a phone call also.</p> <p>2 But it was put together since our time</p> <p>3 was already running from Friday because we had</p> <p>4 to get this completed by the 19th. There was a</p> <p>5 lot of work ahead of us to do so if we were</p> <p>6 going to comply with the order. And the first</p> <p>7 goal would have been to determine what needed to</p> <p>8 be done to comply with that order.</p> <p>9 Q. Who were the attorneys who were on that call?</p> <p>10 A. I know for sure Mr. Farr. I can't recollect who</p> <p>11 else might have been in the room at that time</p> <p>12 because I wasn't in there.</p> <p>13 Q. So that was -- as best you remember, that was on</p> <p>14 Saturday, the day after the decision came out;</p> <p>15 is that right?</p> <p>16 A. That is correct the best I can remember.</p> <p>17 Q. Did you come to Raleigh at some point?</p> <p>18 A. It probably was the first of the next week. We</p> <p>19 weren't in session at that time. So my best --</p> <p>20 either Monday or Tuesday of that week trying to</p> <p>21 get in and try to begin the process of redrawing</p> <p>22 a map that would have met the requirements and</p> <p>23 complied with the Harris order.</p> <p>24 And so best I can recollect, it was</p> <p>25 either Monday or Tuesday that I was in Raleigh</p> <p style="text-align: right;">29</p>	<p>1 use traditional redistricting criteria to abide</p> <p>2 by what the court asked us to do. Under the</p> <p>3 circumstances, it was clear to both</p> <p>4 Representative Lewis, myself and counsel that</p> <p>5 the court, despite mountains of evidence, found</p> <p>6 that there was no racially polarized voting in</p> <p>7 the State of North Carolina, and in that sense</p> <p>8 we were not able to use race in any manner.</p> <p>9 It was also clear from the order that</p> <p>10 the 12th district was not something that many</p> <p>11 people liked, even though it's something that we</p> <p>12 inherited, it had been litigated on many</p> <p>13 occasions, the Supreme Court validated it and we</p> <p>14 used it in our 2011 plan to get pre-clearance</p> <p>15 and follow the law as it was understood by us.</p> <p>16 Q. When you met with Dr. Hofeller on that Monday or</p> <p>17 Tuesday, did you discuss criteria at that</p> <p>18 meeting?</p> <p>19 A. Yes, ma'am, I think we were discussing that so</p> <p>20 that we would have the opportunity to clearly</p> <p>21 state to Dr. Hofeller what we felt was the key</p> <p>22 criteria in doing so.</p> <p>23 Again, you know better than I that</p> <p>24 equal population is one that is mandated and you</p> <p>25 know we could go through that whole list of</p> <p style="text-align: right;">31</p>
<p>1 to be in the process and get ready to set up the</p> <p>2 public hearing on the 15th and get all the other</p> <p>3 parts of it in order.</p> <p>4 Q. Did you meet with Dr. Hofeller at some point</p> <p>5 that week of February 8th?</p> <p>6 A. Yes, ma'am. I believe it was either on -- could</p> <p>7 have been Monday or Tuesday or Wednesday of that</p> <p>8 week speaking with Dr. Hofeller.</p> <p>9 Q. So that was one of the first things that you did</p> <p>10 after you spoke with your counsel about the</p> <p>11 decision when it came out?</p> <p>12 A. Was to --</p> <p>13 Q. To meet with Dr. Hofeller.</p> <p>14 A. Well, once we were able to establish what was</p> <p>15 necessary to comply with the order, it was our</p> <p>16 responsibility, both Representative Lewis and</p> <p>17 myself, to let Dr. Hofeller know indeed what we</p> <p>18 needed to do to establish the criteria that</p> <p>19 we've already gotten.</p> <p>20 You know, we tried to establish</p> <p>21 criteria and have it implemented on the map so</p> <p>22 that -- to the best of our ability to comply</p> <p>23 with the court order.</p> <p>24 Q. When did you establish the criteria?</p> <p>25 A. It was on -- during the entire process trying to</p> <p style="text-align: right;">30</p>	<p>1 contiguity, talking about the issue of changing</p> <p>2 the 12th and consolidating it, which I thought</p> <p>3 was a great idea, especially in lieu of the</p> <p>4 court's decision and all of the other criteria</p> <p>5 that were there.</p> <p>6 We had a chance to go through that, and</p> <p>7 then Dr. Hofeller would be trying to</p> <p>8 implement that on the map so we could get a map</p> <p>9 that would meet the requirements of the court</p> <p>10 and have no misunderstanding as to what we were</p> <p>11 trying to do. And it was clearly that we did</p> <p>12 not include race anywhere in the drawing of that</p> <p>13 map.</p> <p>14 Q. Did Dr. Hofeller provide input on the criteria?</p> <p>15 A. I can't believe -- think that -- you know, if he</p> <p>16 told us, input would be more like, well, this is</p> <p>17 what I would need to do in order to achieve what</p> <p>18 you want to achieve, just letting us -- you</p> <p>19 know, informing us what he would do.</p> <p>20 But he was the person with the</p> <p>21 knowledge, and we basically told him these are</p> <p>22 the things that we needed to achieve because</p> <p>23 this is what we believed was required of us to</p> <p>24 comply with the Harris decision.</p> <p>25 And in building the criteria, I think</p> <p style="text-align: right;">32</p>

<p>1 we had about eight points on there, recognizing</p> <p>2 that not one of those is a -- takes priority</p> <p>3 over any other and it was a harmonization of all</p> <p>4 of those criteria that allowed us to find a map</p> <p>5 that finally was approved by the court.</p> <p>6 Q. Did you tell Dr. Hofeller in that meeting on</p> <p>7 Monday or Tuesday that you wanted to give</p> <p>8 Republicans a 10-3 advantage in the new</p> <p>9 congressional plan?</p> <p>10 A. I believe that what we wanted to do in</p> <p>11 explaining the criteria that we wanted to --</p> <p>12 similarly do what was in the original enacted</p> <p>13 map that was a 10-3, we would like to see</p> <p>14 whether it was possible to achieve the same mix</p> <p>15 and -- and what that really means is to give</p> <p>16 Republicans an opportunity in competitive</p> <p>17 districts that would have been drawn by</p> <p>18 following and harmonizing all of the criteria</p> <p>19 necessary to achieve our goal of getting the</p> <p>20 Harris court satisfied with our map.</p> <p>21 Q. So did you tell Dr. Hofeller that day that --</p> <p>22 A. That was one of the list that we would have</p> <p>23 wanted him to include in his efforts.</p> <p>24 MR. FARR: Senator Rucho --</p> <p>25 THE WITNESS: Sir.</p> <p style="text-align: right;">33</p>	<p>1 you when you met with Dr. Hofeller on</p> <p>2 February 8th or 9th?</p> <p>3 A. Not this document. It would have been putting</p> <p>4 together what would have been traditional</p> <p>5 redistricting criteria which, again, equal</p> <p>6 population, contiguity, the political data,</p> <p>7 partisan advantage.</p> <p>8 Of course, the 12th district was</p> <p>9 something that the court had requested or</p> <p>10 suggested that would be remedied. Of course</p> <p>11 compactness and how we felt it was to be</p> <p>12 achieved by having all counties and, of course,</p> <p>13 a traditional redistricting criteria including</p> <p>14 incumbency when possible. This explains what we</p> <p>15 explained to him.</p> <p>16 Q. Did you look at a document with criteria on it</p> <p>17 when you met with Dr. Hofeller?</p> <p>18 A. Not that I recollect.</p> <p>19 Q. So there was no one document with the criteria</p> <p>20 that you discussed?</p> <p>21 A. Not at the time we discussed with Dr. Hofeller.</p> <p>22 Q. When was Exhibit 24 created, first created?</p> <p>23 A. Goodness gracious. It was sometime during that</p> <p>24 week prior to submitting the plans because</p> <p>25 Dr. Hofeller needed to have some -- the criteria</p> <p style="text-align: right;">35</p>
<p>1 MR. FARR: -- would you let Caroline</p> <p>2 finish her question so it's easier for the</p> <p>3 court reporter.</p> <p>4 THE WITNESS: That's fine.</p> <p>5 BY MS. MACKIE:</p> <p>6 Q. Thank you.</p> <p>7 Senator, you mentioned a list with</p> <p>8 about eight points. Is there a document that</p> <p>9 reflects the criteria that you discussed that</p> <p>10 day with Dr. Hofeller?</p> <p>11 A. The document was I think one of the -- one of</p> <p>12 the pieces of evidence that was submitted</p> <p>13 yesterday. I think it was number 28.</p> <p>14 Q. Let me hand you what was marked as Exhibit 24.</p> <p>15 A. 24. Okay. Sorry.</p> <p>16 Q. Is that the document that you discussed with</p> <p>17 Dr. Hofeller?</p> <p>18 A. That reflects the criteria that was established</p> <p>19 to have us achieve our goal of getting the map</p> <p>20 drawn that would have been acceptable to the</p> <p>21 Harris court.</p> <p>22 Q. I'm sorry, I may not have understood your</p> <p>23 answer. I may not have phrased my question</p> <p>24 correctly.</p> <p>25 Did you have this document in front of</p> <p style="text-align: right;">34</p>	<p>1 so that he could produce a map that complied</p> <p>2 with those in a harmonized fashion. I don't</p> <p>3 remember exactly the date.</p> <p>4 Q. Do you know who drafted Exhibit 24?</p> <p>5 A. Not specifically. I don't know the individual.</p> <p>6 I don't remember who it was.</p> <p>7 Q. Did you have a part in drafting Exhibit 24?</p> <p>8 A. My part of it would have been at the time we sat</p> <p>9 down and talked with Dr. Hofeller, as we told</p> <p>10 him the areas that we felt were important, I</p> <p>11 would have just put my opinion in as to when and</p> <p>12 how they would work and what they were trying to</p> <p>13 do, asking questions, making sure that</p> <p>14 everything was as best we could make it.</p> <p>15 Q. Did you take any notes at that meeting?</p> <p>16 A. No, ma'am.</p> <p>17 Q. And who was present when you met on Monday or</p> <p>18 Tuesday?</p> <p>19 A. I remember it was Dr. Hofeller, myself,</p> <p>20 Representative Lewis, Attorney Goodson, Brent</p> <p>21 Woodcox and probably Jim Blaine.</p> <p>22 Q. Who is Attorney Goodson?</p> <p>23 A. He works with the Speaker's office.</p> <p>24 Q. And who is Jim Blaine?</p> <p>25 A. Jim Blaine is -- works with the legislature.</p> <p style="text-align: right;">36</p>

<p>1 Q. What does he do with the legislature?</p> <p>2 A. He's, I think, Senator Berger's -- I think his</p> <p>3 title is chief of staff with the pro tem's</p> <p>4 office.</p> <p>5 Q. Was Senator Berger at that meeting?</p> <p>6 A. No, ma'am.</p> <p>7 Q. And where did you meet?</p> <p>8 A. I believe it was at Dr. Hofeller's home.</p> <p>9 Q. Did Dr. Hofeller show you any maps that day?</p> <p>10 A. Some initial maps. As you know, the map drawing</p> <p>11 is a process of iterations, and at that point he</p> <p>12 would have done some basics well beyond my level</p> <p>13 of how Maptitude work, not only my level of</p> <p>14 knowledge but looking at some preliminary maps</p> <p>15 that he may have been working on as far as the</p> <p>16 basics.</p> <p>17 And then after we refined what we were</p> <p>18 looking for as far as specific criteria, then he</p> <p>19 would have finalized it and then got it to the</p> <p>20 point where it was ready to be submitted to the</p> <p>21 committee.</p> <p>22 Q. So the maps that you reviewed that day meeting</p> <p>23 with Dr. Hofeller were drawn by him without any</p> <p>24 input from you and Representative Lewis?</p> <p>25 A. It would have been -- it would have been a --</p> <p style="text-align: right;">37</p>	<p>1 there is no -- that's just mandatory.</p> <p>2 Q. At this point you were still currently Senate</p> <p>3 Redistricting Committee chair?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. So you didn't have to be reappointed that week?</p> <p>6 A. Once they gave me the job, it was mine. So, no,</p> <p>7 I don't believe we had to get reappointed.</p> <p>8 Q. Did you schedule committee meetings?</p> <p>9 A. I'm sure at that point we were trying to be sure</p> <p>10 that we had a map ready to bring before.</p> <p>11 It's like any other piece of</p> <p>12 legislation, whether it's redistricting or any</p> <p>13 other. You get your concept, you sit down with</p> <p>14 people that are helping you put it together and</p> <p>15 then you bring it forward to the committee for</p> <p>16 debate, discussion, amendments or whatever might</p> <p>17 be done.</p> <p>18 And in conjunction with that, as we did</p> <p>19 when we did the 2011 map, we had criteria</p> <p>20 established as to how to draw those maps, fair</p> <p>21 and legal at that time.</p> <p>22 Well, in this case, even though we</p> <p>23 really believed our map was constitutional, the</p> <p>24 court required us to come up with an alternative</p> <p>25 map in a very short period of time. We had to</p> <p style="text-align: right;">39</p>
<p>1 the cursory or the preliminary requirements of</p> <p>2 getting the map on there and all that stuff and</p> <p>3 then some preliminary designs or ideas as to</p> <p>4 what might be done in regard to drawing the map.</p> <p>5 It is a long process in a short period</p> <p>6 of time, so it would have been some cursory</p> <p>7 designs. And then as we refined the criteria</p> <p>8 that was necessary for us to comply with the</p> <p>9 court order, he would have refined the map to</p> <p>10 the -- to one that would be able to be presented</p> <p>11 to the committee, to the General Assembly.</p> <p>12 Q. Did you have any discussion about the partisan</p> <p>13 breakdown of the maps that Dr. Hofeller showed</p> <p>14 you?</p> <p>15 A. Not that I recollect. All I can say is that</p> <p>16 we -- by that time we had come to the conclusion</p> <p>17 that, of course, race was totally to be not</p> <p>18 included and also partisan registration was not</p> <p>19 to be included in there and that the 12th</p> <p>20 district was not to be -- or was to be</p> <p>21 consolidated, however it would have been put</p> <p>22 together. And it took, I'm sure, some time to</p> <p>23 figure out how to best do that.</p> <p>24 And then again, after that, equal</p> <p>25 population would have been a requirement that</p> <p style="text-align: right;">38</p>	<p>1 have the map -- finished map, passed map in the</p> <p>2 hands of the court by the 19th is my best guess,</p> <p>3 my best recollection, so...</p> <p>4 Q. My question is: Did you schedule committee</p> <p>5 meetings?</p> <p>6 A. We were -- first of all, we needed to get a map</p> <p>7 close so that we can have something to bring</p> <p>8 forward. But, yes, we actually set up a public</p> <p>9 hearing on the 15th and then committee hearings</p> <p>10 to follow.</p> <p>11 Q. When did you set up that public hearing?</p> <p>12 A. It was the latter part of -- what was the week</p> <p>13 prior to the 15th?</p> <p>14 Q. The week of the 8th.</p> <p>15 A. Right. It was somewhere in there talking with</p> <p>16 Ms. Churchill and the other staff members who</p> <p>17 helped us with the -- the IT department who</p> <p>18 helped us with the original redistricting,</p> <p>19 setting up public hearings and the like. So we</p> <p>20 did set up the public hearing. I think it was</p> <p>21 in about five or six locations on that Monday.</p> <p>22 Q. What did you do between that initial meeting</p> <p>23 with Dr. Hofeller on Monday or Tuesday and then</p> <p>24 setting up the public hearing, which I believe</p> <p>25 you said was you set that up at the end of the</p> <p style="text-align: right;">40</p>

<p>1 week. What else did you do that week?</p> <p>2 A. Well, I'm sure getting all of the -- working</p> <p>3 with staff to get the documentation ready for</p> <p>4 the committee meetings, that included the list</p> <p>5 of criteria listed and being able to explain.</p> <p>6 And then we also had to set up the</p> <p>7 Joint House and Senate Redistricting Committee</p> <p>8 to adopt the criteria.</p> <p>9 And then, of course, we had additional</p> <p>10 committee meetings on redistricting, additional</p> <p>11 committee meetings with the possibility that we</p> <p>12 would have to establish a new election schedule</p> <p>13 so that it would have had to comply with what</p> <p>14 the Harris court wanted us to do different than</p> <p>15 what was the normal primary time.</p> <p>16 Q. When -- you said earlier that the court gave you</p> <p>17 two weeks to draw new plans.</p> <p>18 A. 14 days, but that -- that also included</p> <p>19 weekends. That also included the fact that we</p> <p>20 didn't learn of it until Friday late. So we</p> <p>21 lost a lot of time in what is -- it took us</p> <p>22 months to do the original map, the 2011 map, and</p> <p>23 we had to really -- and I think the staff worked</p> <p>24 very hard to try to help us get this</p> <p>25 accomplished in a timely manner.</p> <p style="text-align: right;">41</p>	<p>1 Q. What about the next three on the first page of</p> <p>2 Exhibit 24?</p> <p>3 A. The political data, it was designed for us to be</p> <p>4 able to use election results as a way of</p> <p>5 determining how those districts would have been</p> <p>6 put into place, you know, what VTDs were there</p> <p>7 with the -- part of the criteria of making sure</p> <p>8 that we did whole counties wherever we could.</p> <p>9 And actually, 13 split counties and 12</p> <p>10 split VTDs is the best it's ever been. I don't</p> <p>11 believe any other map has ever achieved that</p> <p>12 kind of what you would call compactness because</p> <p>13 keeping whole counties whole together is what we</p> <p>14 considered important in regard to compactness.</p> <p>15 Q. Did you just orally tell that information to</p> <p>16 Dr. Hofeller or did you e-mail it to him? How</p> <p>17 did you convey --</p> <p>18 A. It was just a discussion as to what we felt. I</p> <p>19 mean, a lot of what we did in the 2016</p> <p>20 contingent were similar in the sense that these</p> <p>21 were all things that were done at the time of</p> <p>22 2011 so it was a repeat but with the fact that</p> <p>23 we totally eliminated race completely and in</p> <p>24 doing political data as far as how we drew the</p> <p>25 maps and put counties together. And I believe</p> <p style="text-align: right;">43</p>
<p>1 Q. Is it your understanding that the two-week</p> <p>2 timeframe came from a general statute?</p> <p>3 A. That should be revisited at some point, but,</p> <p>4 yes, my understanding was that's what the 14</p> <p>5 days were, but it's still not enough time -- or</p> <p>6 let's just say to you not without having to put</p> <p>7 a lot of pressure on a lot of people to try to</p> <p>8 meet that schedule.</p> <p>9 Q. But you did it in 2016?</p> <p>10 A. Magically.</p> <p>11 Q. When you met with Dr. Hofeller on Monday or</p> <p>12 Tuesday of that week, did Dr. Hofeller take any</p> <p>13 notes about the criteria that you discussed?</p> <p>14 A. Not that I know of.</p> <p>15 Q. How did you convey the criteria that he should</p> <p>16 use in drawing the maps to him?</p> <p>17 A. Well, the criteria, as you can see before us, a</p> <p>18 lot of it is evident. I mean, we recognize that</p> <p>19 any congressional district there is zero</p> <p>20 deviation, so that's an automatic. That</p> <p>21 automatically is a criteria.</p> <p>22 The issue of contiguity is a</p> <p>23 requirement in redistricting. The counties have</p> <p>24 to be adjacent to one another, connected. Of</p> <p>25 course --</p> <p style="text-align: right;">42</p>	<p>1 Dr. Hofeller's testimony was there, but we</p> <p>2 wanted to eliminate any possibility that race</p> <p>3 was included in any of the design of the</p> <p>4 districts.</p> <p>5 Q. Was partisan advantage a goal of the 2011</p> <p>6 Congressional Plan?</p> <p>7 A. What partisan advantage in my judgment really</p> <p>8 says is that it's important to be able to have</p> <p>9 congressional districts that even Republicans</p> <p>10 have a chance of winning and try to be</p> <p>11 competitive in.</p> <p>12 If you look at the maps and you look at</p> <p>13 the stat packs in the '11 and in the 2016 maps,</p> <p>14 not one -- out of the 13, 10 of them that are</p> <p>15 there in, quote, won by Republicans, not one of</p> <p>16 them has a Republican majority in it. So any of</p> <p>17 those districts require a candidate to come</p> <p>18 forward and garner Republican votes,</p> <p>19 unaffiliated votes and even potentially some</p> <p>20 Democrat votes to win that election so they're</p> <p>21 competitive.</p> <p>22 Q. I'm sorry. You're talking registration numbers?</p> <p>23 A. I'm talking, in essence, the people that</p> <p>24 comprise the district. It would have required</p> <p>25 in our state -- we have about 22 to 25 percent</p> <p style="text-align: right;">44</p>

<p>1 unaffiliated voters, and I believe that reflects</p> <p>2 pretty closely as to the breakdown in most of</p> <p>3 the districts. None of those districts were</p> <p>4 ever a slam dunk majority for the Republicans.</p> <p>5 Q. In terms of registered Republicans?</p> <p>6 A. People that would have participated there, yes.</p> <p>7 Registered, yes.</p> <p>8 Q. Based on their voter registration?</p> <p>9 A. (Witness nodding head up and down.)</p> <p>10 Q. Yes? Is that a "yes"?</p> <p>11 A. Yes. Even though when we drew the maps,</p> <p>12 registration was not one of the criteria that we</p> <p>13 actually used. It was strictly election</p> <p>14 results. I'm basically going now as to what the</p> <p>15 final results were having looked at it</p> <p>16 subsequently.</p> <p>17 Q. So you looked at it after the fact and noticed</p> <p>18 that Republicans were not a majority of the</p> <p>19 registered voters in any of the districts</p> <p>20 enacted?</p> <p>21 A. That's correct. And that is also similar to the</p> <p>22 2011 plan.</p> <p>23 Q. Did you e-mail Dr. Hofeller with the criteria</p> <p>24 that you discussed at that meeting?</p> <p>25 A. I don't recollect doing that, no, ma'am.</p> <p style="text-align: right;">45</p>	<p>1 rarely do. Especially I don't want any</p> <p>2 misunderstanding when I'm explaining to people</p> <p>3 what I would expect from them.</p> <p>4 Q. Did you communicate with Dr. Hofeller in writing</p> <p>5 through counsel?</p> <p>6 MR. FARR: Well, I'll object to that.</p> <p>7 Instruct you not to answer.</p> <p>8 MS. MACKIE: The question is just</p> <p>9 whether that happened, not the subject of any of</p> <p>10 those communications.</p> <p>11 THE WITNESS: I can't recall that that</p> <p>12 was done through counsel.</p> <p>13 BY MS. MACKIE:</p> <p>14 Q. You don't recall e-mailing Dr. Hofeller and</p> <p>15 copying Mr. Farr on the e-mails?</p> <p>16 A. I don't recall doing that.</p> <p>17 Q. I'm going to get into some notebooks which we</p> <p>18 will mark as exhibits.</p> <p>19 MR. FARR: Caroline, before we do this,</p> <p>20 can we take a break.</p> <p>21 THE VIDEOGRAPHER: Off record at</p> <p>22 10:37 a.m.</p> <p>23 (Brief Recess.)</p> <p>24 THE VIDEOGRAPHER: On record at</p> <p>25 10:52 a.m.</p> <p style="text-align: right;">47</p>
<p>1 Q. Did you communicate with him by e-mail in</p> <p>2 February of 2016?</p> <p>3 A. I don't remember communicating with Dr. Hofeller</p> <p>4 by e-mail.</p> <p>5 Q. Did he advise you not to e-mail him?</p> <p>6 A. He never told me that.</p> <p>7 Q. You were here yesterday in his deposition.</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. You saw the PowerPoints or heard testimony about</p> <p>10 the PowerPoint where he warned against putting</p> <p>11 things in writing during redistricting.</p> <p>12 Do you agree with Dr. Hofeller's</p> <p>13 concerns?</p> <p>14 MR. FARR: Objection to the form.</p> <p>15 THE WITNESS: I'm not sure that I can</p> <p>16 communicate clearly -- as clearly as I would</p> <p>17 verbally when I'm communicating issues or what</p> <p>18 requirements that I'm asking Dr. Hofeller or any</p> <p>19 of my staff people on an e-mail versus verbally.</p> <p>20 I probably comply to the Roy Cooper</p> <p>21 philosophy of never putting -- never doing</p> <p>22 e-mails, so...</p> <p>23 BY MS. MACKIE:</p> <p>24 Q. So would that be a yes that you --</p> <p>25 A. Well, similarly, I just don't do e-mails or</p> <p style="text-align: right;">46</p>	<p>1 BY MS. MACKIE:</p> <p>2 Q. Senator Rucho, I want to follow up on a couple</p> <p>3 of things that we discussed before the break.</p> <p>4 One of the things is that Saturday</p> <p>5 meeting where you called in from Matthews,</p> <p>6 right?</p> <p>7 A. That's what I recollect, yes.</p> <p>8 Q. Did you discuss goals for the new map at that</p> <p>9 meeting?</p> <p>10 MR. FARR: Objection. Instruct you not</p> <p>11 to answer. Attorney-client privilege.</p> <p>12 BY MS. MACKIE:</p> <p>13 Q. So that was a conversation with your counsel on</p> <p>14 that day?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. So you are not going to answer any questions</p> <p>17 about the substance of that conversation based</p> <p>18 on attorney-client privilege?</p> <p>19 MR. FARR: Because I've told him to not</p> <p>20 answer.</p> <p>21 THE WITNESS: Advice of my counsel.</p> <p>22 BY MS. MACKIE:</p> <p>23 Q. Thank you.</p> <p>24 You said earlier that you -- at some</p> <p>25 point that following week, the week of</p> <p style="text-align: right;">48</p>

<p>1 February 8th, 9th --</p> <p>2 A. Whatever the Monday -- the 8th.</p> <p>3 Q. Yes, I'm having trouble remembering that date.</p> <p>4 -- that Hofeller needed the criteria</p> <p>5 that week so it was put into writing at some</p> <p>6 point that week.</p> <p>7 Is that an accurate assessment of your</p> <p>8 testimony?</p> <p>9 A. I would say to you that once we established the</p> <p>10 criteria, it was a document that was being</p> <p>11 presented to the Joint House and Senate</p> <p>12 Committee on Redistricting would have had a</p> <p>13 written document explaining the criteria so that</p> <p>14 it would have been able to be discussed and</p> <p>15 voted on for approval.</p> <p>16 Q. And my question is when was the criteria put</p> <p>17 into a document.</p> <p>18 A. Sometime during that week.</p> <p>19 Q. The week of February 8th?</p> <p>20 A. Right. Prior to -- prior to the committee</p> <p>21 meetings.</p> <p>22 Q. And what was the purpose of putting it in</p> <p>23 writing?</p> <p>24 A. To present it to the committee.</p> <p>25 Q. Was another purpose to present it to</p> <p style="text-align: right;">49</p>	<p>1 A. Whatever they chose to talk about. There was no</p> <p>2 requirement anyway.</p> <p>3 Q. But what was your goal?</p> <p>4 A. To hear what they had to say. There were no</p> <p>5 specifics. Whatever they thought they needed to</p> <p>6 tell us prior to moving forward would have been</p> <p>7 open for their -- for their comments.</p> <p>8 Q. How did you select the locations for this</p> <p>9 hearing?</p> <p>10 A. We allowed staff to do so, similar to picking</p> <p>11 where we had locations suitable for -- what is</p> <p>12 the proper term -- videoconferencing at</p> <p>13 different community colleges that had that</p> <p>14 ability, actually. When there was possibilities</p> <p>15 of accommodating some of the senators or House</p> <p>16 members to a location they wanted to, staff was</p> <p>17 able to identify suitable sites and we were able</p> <p>18 to put together, I think as I mentioned to you,</p> <p>19 about five or six sites.</p> <p>20 Q. Did you advise staff on the counties where</p> <p>21 these -- the hearing should take place?</p> <p>22 A. Other than Raleigh, of course, where we had it,</p> <p>23 but we allowed them to use the location that</p> <p>24 they found they could have a suitable</p> <p>25 audio/visual capabilities.</p> <p style="text-align: right;">51</p>
<p>1 Dr. Hofeller?</p> <p>2 A. No, ma'am. We had already had that discussion.</p> <p>3 Q. And he had already started drawing maps?</p> <p>4 A. With our guidance.</p> <p>5 (WHEREUPON, Plaintiffs' Exhibit 33 was</p> <p>6 marked for identification.)</p> <p>7 BY MS. MACKIE:</p> <p>8 Q. You have in front of you what we have marked as</p> <p>9 Exhibit 33 which is a notebook containing the</p> <p>10 public hearing transcript.</p> <p>11 Have you seen this before?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Who planned this hearing?</p> <p>14 A. The meeting was asked -- Representative Lewis</p> <p>15 and I requested Ms. Churchill and IT from the</p> <p>16 General Assembly to put it together.</p> <p>17 Q. And what was the purpose of it?</p> <p>18 A. To get public input.</p> <p>19 Q. Public input into what exactly?</p> <p>20 A. What would have been the -- as we did in the</p> <p>21 original maps, 2011 maps, we wanted to hear from</p> <p>22 the public any comments they may have in regard</p> <p>23 to congressional redistricting.</p> <p>24 Q. Did you want to hear from the public on the</p> <p>25 criteria used to draw the maps?</p> <p style="text-align: right;">50</p>	<p>1 Q. So you didn't suggest to staff that they should</p> <p>2 look for a location around Fayetteville?</p> <p>3 A. Not that I remember.</p> <p>4 Q. You left that completely up to staff?</p> <p>5 A. (Witness nodding head up and down.)</p> <p>6 Q. Did you tell staff how many locations you</p> <p>7 wanted?</p> <p>8 A. We told them five or six, where possible. And</p> <p>9 there was a very short timeframe, actually. So</p> <p>10 we didn't have the luxury of putting -- they had</p> <p>11 to do it very quickly.</p> <p>12 Q. When did you announce that the public hearing</p> <p>13 would take place?</p> <p>14 A. As best I can remember, I thought it was on the</p> <p>15 Friday prior to the county -- prior to the</p> <p>16 hearing on the 15th.</p> <p>17 Q. Okay. So Friday, February 12th?</p> <p>18 A. I believe that's correct.</p> <p>19 Q. Okay. And how did you announce it?</p> <p>20 A. I allowed Ms. Churchill to do what normally is</p> <p>21 done as far as public announcement.</p> <p>22 Q. Through the --</p> <p>23 A. Media.</p> <p>24 Q. Was it through the redistricting committee</p> <p>25 website or how?</p> <p style="text-align: right;">52</p>

<p>1 A. Well, that was part of it, but I think they also 2 did it through media contact, similar to what 3 they did the first time. 4 Q. Did you give Ms. Churchill any instruction on 5 how she should announce it or avenues of the 6 media she should use or anything like that? 7 A. Just like she did the first time. 8 Q. Did you preside at this hearing? 9 A. I was -- I presided at the Raleigh location, and 10 then there were House and Senate members that 11 presided at the satellite location. 12 Q. And were the satellite locations linked into the 13 Raleigh location through videoconference or 14 through teleconference? 15 A. I'm not sure I know the difference. 16 Q. Could you see the people in the other locations? 17 A. Yes. 18 Q. And you could also hear them? 19 A. Yes, ma'am. And we rotated through the -- each 20 of the sites. 21 Q. Okay. Could the people in the other location 22 see you? 23 A. Yes. 24 Q. Could they see each other? 25 A. Could they see --</p> <p style="text-align: right;">53</p>	<p>1 Q. Did you draw straws? 2 A. Is that the long or the short straw? 3 Q. I don't know. You tell me. 4 Did Hofeller attend this public 5 hearing? 6 A. No, ma'am. 7 Q. Did you send him transcripts of the public 8 hearing? 9 A. I don't recall that. 10 Q. Did members of the public have the opportunity 11 to submit written comments? 12 A. Yes, ma'am. 13 Q. And was that in addition to attending a public 14 hearing or was that separate from attending the 15 public hearing? 16 A. They could go on to the website and submit -- 17 even if they attended, they still had the 18 ability to submit a public comment too, and if 19 they didn't attend it, they could do it. So it 20 was pretty broad based. 21 Q. Did you send -- did you receive written comments 22 through the website? 23 A. Yes. 24 Q. Do you have a recollection of how many you 25 received?</p> <p style="text-align: right;">55</p>
<p>1 Q. So could the individuals who showed up in 2 Fayetteville see the people who were in 3 New Hanover county? 4 A. I think the person who was speaking at the time 5 when they came to the podium or came to the 6 microphone. Is that what you mean? 7 Q. Sure. 8 A. If they came to the microphone, the camera is on 9 them, and so when they saw the people that were 10 in the other locations listening could see that 11 individual. 12 Q. Okay. So everybody who attended this public 13 hearing, wherever they were, they could see the 14 person speaking? 15 A. Yes, ma'am. 16 Q. And I'm sorry, did you say whether you presided 17 at this hearing? 18 A. I did. 19 Q. And you did preside. I'm sorry, that was not a 20 clear question. 21 A. I presided. 22 Q. Thank you. 23 How did you decide that you would be 24 the one to preside at this hearing? 25 A. I spoke with Representative Lewis and --</p> <p style="text-align: right;">54</p>	<p>1 A. I don't recall. 2 Q. Okay. Did you send those to Dr. Hofeller? 3 A. No, ma'am. 4 Q. Did you in any way convey the comments from the 5 public to Dr. Hofeller? 6 A. No. I mean, other than the fact that in the 7 criteria -- I mean, there was no specifics in 8 the sense of Representative Lewis and I 9 independently read the reports. You know, we 10 were present there for most of it, but any of 11 the written, and if there was anything pertinent 12 we would have related it to Dr. Hofeller that 13 was needed. 14 Q. So you and Representative Lewis read this 15 transcript? 16 A. I did, and I'm assuming he did also, and then 17 also the written comments that would have come. 18 Q. When did you read those? 19 A. Probably late -- that was a very long meeting on 20 the 15th, but we read it to see if there was 21 anything specifically on the written comments 22 because we were present for most of the -- or I 23 was and I'm sure he was too -- present for most 24 of the public hearing. 25 Q. And then you conveyed some of those comments to</p> <p style="text-align: right;">56</p>

<p>1 Dr. Hofeller?</p> <p>2 A. I don't recollect directly. I mean, if it was</p> <p>3 necessary we would have been, but that would</p> <p>4 have been our -- based on our judgment.</p> <p>5 Q. So yes or no? Did you convey any of the</p> <p>6 comments from --</p> <p>7 A. No.</p> <p>8 Q. Okay. Did members of the public make comments</p> <p>9 either at the public hearing or through written</p> <p>10 submissions showing concern about a potential</p> <p>11 partisan gerrymander?</p> <p>12 A. Not that I can recall.</p> <p>13 Q. You have no recollection of members concerned</p> <p>14 about an unequal balance of political power in</p> <p>15 the congressional plans?</p> <p>16 MR. FARR: Objection to the form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: I can't recall that.</p> <p>19 BY MS. MACKIE:</p> <p>20 Q. Do you have a recollection of members of the</p> <p>21 public asking the legislature to leave politics</p> <p>22 out of the map-drawing process?</p> <p>23 A. I can't recall.</p> <p>24 Q. Do you have a recollection of members of the</p> <p>25 public requesting a non-partisan commission to</p> <p style="text-align: right;">57</p>	<p>1 A. Just read them --</p> <p>2 Q. You can read them out loud.</p> <p>3 A. Okay. Starting at Line 3:</p> <p>4 "We need to create a non-partisan</p> <p>5 redistricting" --</p> <p>6 Q. I'm sorry. Page 59.</p> <p>7 A. 59. Okay. Starting on page -- okay.</p> <p>8 "But when too many officeholders</p> <p>9 represent districts drawn to be safe, the</p> <p>10 incentive for compromise is greatly</p> <p>11 reduced. And nowadays, the safe district</p> <p>12 effect is compounded by an incumbent's</p> <p>13 reasonable concern that he or she may</p> <p>14 face a primary challenger.</p> <p>15 "It seems fair to assume that we can</p> <p>16 all agree that at present, gridlock at</p> <p>17 the Congressional level is a serious</p> <p>18 problem. It's not an easy problem to</p> <p>19 resolve, but reducing the number of safe</p> <p>20 districts would surely have some</p> <p>21 favorable impact by increasing the</p> <p>22 incentive to compromise."</p> <p>23 Q. And if you will read on Page 58 beginning at</p> <p>24 Line 16, the sentence that starts with "When,"</p> <p>25 and just read through the end of that paragraph.</p> <p style="text-align: right;">59</p>
<p>1 draw the maps?</p> <p>2 A. That -- some people chose to use their time to</p> <p>3 discuss that, but that wasn't pertinent to what</p> <p>4 we were there for public hearing-wise.</p> <p>5 Q. Why wasn't that pertinent?</p> <p>6 A. Because we were concerned about getting the map</p> <p>7 drawn. That had nothing to do with what our</p> <p>8 goal was, and that was to comply with the Harris</p> <p>9 order.</p> <p>10 Q. Did you convey any comments to Dr. Hofeller</p> <p>11 about public comments relating to the partisan</p> <p>12 makeup of the map that he was drawing?</p> <p>13 A. I can't -- I don't believe I did.</p> <p>14 Q. Okay. If you will turn to Page 58 -- actually,</p> <p>15 if you'll turn to Page 57 first. You see about,</p> <p>16 oh, at Line 10 there's a speaker Mr. Tom Byers?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Do you recall Mr. Byers speaking from Asheville?</p> <p>19 A. Gracious, we must have had probably maybe close</p> <p>20 to 200 speakers. So I don't remember Mr. Byers.</p> <p>21 Q. Fair enough. Not a memory test. Luckily we</p> <p>22 have a transcript here to help us.</p> <p>23 If you will look at Page 59 and</p> <p>24 starting at Line 3 just read the next two</p> <p>25 paragraphs.</p> <p style="text-align: right;">58</p>	<p>1 A. "When the party in power manipulates</p> <p>2 boundaries to give itself an edge, the</p> <p>3 end result is elected officials who don't</p> <p>4 necessarily represent the true preference</p> <p>5 of the majority. That is not good."</p> <p>6 Q. Does that refresh your recollection about</p> <p>7 whether since citizens spoke out about the</p> <p>8 potential partisan impact of the plan?</p> <p>9 A. It's just a concern raised by an individual.</p> <p>10 You know, whether it's accurate or not is -- you</p> <p>11 know, each person would make up their own</p> <p>12 choice.</p> <p>13 But, you know, our goal was to create</p> <p>14 districts that were competitive and that would</p> <p>15 give an opportunity for Republicans and</p> <p>16 Democrats to win districts. So, you know, we</p> <p>17 appreciate his advice, but I don't know if I</p> <p>18 necessarily agree with his comment completely.</p> <p>19 Q. You did not convey that to Dr. Hofeller?</p> <p>20 A. No, ma'am.</p> <p>21 Q. And so you did not take his comment into</p> <p>22 consideration in drawing the 2016 plan?</p> <p>23 A. I don't recall that, no, ma'am.</p> <p>24 Q. Okay. If you will turn to Page 114.</p> <p>25 A. Again what, please.</p> <p style="text-align: right;">60</p>

<p>1 Q. 114. And once you get there, you can look at</p> <p>2 page 113 see who the speaker is.</p> <p>3 A. Okay. I have 113 before me.</p> <p>4 Q. Do you see at the bottom where it's a Mr. Brian</p> <p>5 McCollum? He's a student at UNC Charlotte.</p> <p>6 A. I see that.</p> <p>7 Q. And then on the next page, Page 114, is some of</p> <p>8 Mr. McCollum's statements, and if you will read</p> <p>9 beginning at Line 17 and read through --</p> <p>10 A. Beginning on 17 on Page 114.</p> <p>11 Q. 114 and then read through Line 1 on 115.</p> <p>12 A. On page 17 -- excuse me. On Line 17:</p> <p>13 "You know, we have 13 congressional</p> <p>14 districts in the state, and only three of</p> <p>15 them are Democratic -- or held by</p> <p>16 Democrats. So there's 10 held by</p> <p>17 Republicans, 3 by Democrats."</p> <p>18 Continue or --</p> <p>19 Q. Continue.</p> <p>20 A. "That just does not really add up</p> <p>21 when you consider we're in a 50/50 split,</p> <p>22 you know, liberal/conservative. We went</p> <p>23 to Obama in 2008. We went for Mitt</p> <p>24 Romney in 2012. It's pretty even split.</p> <p>25 So you would think the congressional</p> <p style="text-align: right;">61</p>	<p>1 A. Mr. McCollum, again, another 1 of 200, has an</p> <p>2 opinion that he presented. I don't agree with</p> <p>3 the -- with his analysis of saying then there</p> <p>4 should be similar results based on what partisan</p> <p>5 registration is because it's a different type of</p> <p>6 an election.</p> <p>7 It's an election based on geography.</p> <p>8 It's not statewide. So I'm not sure what he's</p> <p>9 saying -- it's not part of the electoral system</p> <p>10 that we presently have in America.</p> <p>11 Q. But you had a goal of drawing a plan that would</p> <p>12 make reasonable efforts to construct districts</p> <p>13 that would elect 10 Republicans and 3 Democrats?</p> <p>14 A. It would have reflected what was on the enacted</p> <p>15 plan in 2011. And if we were able to follow all</p> <p>16 of the criteria that were established to produce</p> <p>17 a map that passed and was accepted by the Harris</p> <p>18 court, then, you know, 10-3 be what it be.</p> <p>19 Q. My question is: That was one of your criteria,</p> <p>20 right, the 10-3?</p> <p>21 A. It was one of the criteria. As long as you took</p> <p>22 all of the criteria into place, not strictly</p> <p>23 partisan. So that's what is very important.</p> <p>24 It's a harmonization of all the criteria, not</p> <p>25 not just dealing with partisanship.</p> <p style="text-align: right;">63</p>
<p>1 districts would match that."</p> <p>2 Q. Did you convey Mr. McCollum's comments to</p> <p>3 Mr. Hofeller?</p> <p>4 A. No. And I would probably say to you, even in</p> <p>5 lieu of something that was discussed yesterday,</p> <p>6 the congressional districts and the redrawing --</p> <p>7 and the drawing of districts is -- it's</p> <p>8 recognized that these are not statewide</p> <p>9 elections. These are congressional districts</p> <p>10 based on geography, and I'm not sure that</p> <p>11 there's a reflection with the partisan makeup</p> <p>12 and the results because each of the districts</p> <p>13 choose their own elected individual. So I</p> <p>14 chose --</p> <p>15 Q. What do you mean?</p> <p>16 A. So in essence, I chose not to include that</p> <p>17 because these are not statewide elections.</p> <p>18 These are district elections and each district</p> <p>19 is -- the people from that district elect their</p> <p>20 representative. It isn't a necessary reflection</p> <p>21 of the -- of the -- of what would be statewide</p> <p>22 population and partisan numbers.</p> <p>23 Q. Would you agree that Mr. McCollum's comments</p> <p>24 contradict the criteria of partisan advantage</p> <p>25 that's listed on Exhibit 24?</p> <p style="text-align: right;">62</p>	<p>1 Q. Exhibit 24, the adopted criteria, this -- had</p> <p>2 this document been drafted as of February 15,</p> <p>3 2016?</p> <p>4 A. I can't remember if it was in its final</p> <p>5 ready-for-delivery type to be presented to</p> <p>6 committee, but we pretty much understood what</p> <p>7 would have been involved in it.</p> <p>8 Q. And you had already met with Dr. Hofeller and</p> <p>9 conveyed the criteria that you wanted him to use</p> <p>10 to draw the maps?</p> <p>11 A. We had an opportunity to explain to Dr. Hofeller</p> <p>12 what we would have expected in there, and the</p> <p>13 purpose of the criteria was to meet the</p> <p>14 requirements of the Harris court.</p> <p>15 Q. As far as you know, was Dr. Hofeller working on</p> <p>16 maps on February 15, 2016?</p> <p>17 A. I don't know if he was doing it that day or not.</p> <p>18 Q. Was it your understanding after you met with him</p> <p>19 the prior Monday or Tuesday he would start</p> <p>20 immediately working on maps?</p> <p>21 A. Try it again.</p> <p>22 Q. Let me clarify.</p> <p>23 When you met with him on that Monday or</p> <p>24 Tuesday, you looked at some maps that he had</p> <p>25 already drawn.</p> <p style="text-align: right;">64</p>

<p>1 A. We looked at some beginning maps, you know, 2 knowing that there would have had to have 3 been -- one of the criteria would have been 4 trying to keep counties whole, trying to -- you 5 know, that's some of the original stuff you had 6 before we even refined it down to some of the 7 specifics dealing with trying to get to 8 resolution of the Harris order. 9 Q. So after you met on that Monday or Tuesday, was 10 Dr. Hofeller drawing the map that he would 11 present to you and Representative Lewis? 12 A. It was in the process. 13 Q. Okay. Did members of the public convey any 14 concern about the lack of transparency in the 15 process? 16 A. One that I recollect was that -- I guess it was 17 snowing on that Monday so some of them felt that 18 the turnout wouldn't be quite as robust as it 19 could have been, even though we did have 20 significant participation. That was one comment 21 that I remembered, but there wasn't anything we 22 could do about the snow and especially with our 23 timeline. 24 Q. Right. Did members of the public express 25 concern about not knowing the criteria that you</p> <p style="text-align: right;">65</p>	<p>1 Q. Okay. Will you look at Page 43 and beginning at 2 Line 17 read that paragraph out loud. 3 A. Line 43 -- 4 Q. Page 43. 5 A. 17. 6 Q. Line 17. 7 A. "You have produced no maps for 8 alternatives that we would have the 9 opportunity to see, so how do we know 10 that you won't come back with something 11 just as crazy as what you've done 12 already? How can citizens make 13 intelligent comments on something that 14 we have not seen? How do we know that 15 you won't produce the same kind of crazy 16 maps again?" 17 Q. And again, you didn't convey any of these 18 comments to Dr. Hofeller? 19 A. We had 200 people plus presenting their 20 thoughts, and they were all welcome to speak. 21 Q. Did you and Representative Lewis have any 22 conversations about producing maps for members 23 of the public to see? 24 A. The -- I don't recall having a discussion with 25 senator -- Representative Lewis about that</p> <p style="text-align: right;">67</p>
<p>1 would use to draw the maps? 2 A. To my recollection it wasn't mentioned. 3 Q. Did anyone express concern about not having 4 draft maps available to look at? 5 A. I don't recall anyone asking for draft maps, 6 but, again, we were on a very tight schedule 7 trying to get everything done in about eight 8 days, so I can't remember if anyone specifically 9 had requested that. 10 Q. And the announcement for this public hearing was 11 made you think about one week after the decision 12 came out in Harris? 13 A. As best I can remember, it was on the Friday 14 prior to the Monday to get notice out to as many 15 people as we could to let them be informed. 16 Q. So you were halfway through the two-week period 17 when you announced that there would be a public 18 hearing? 19 A. I would -- yeah, that probably would be 20 accurate. 21 Q. Okay. If you'll turn to Page 43. And if you 22 look at the bottom of Page 42, you can identify 23 the speaker as a Mr. Gary Grant who appeared to 24 be in Halifax county. 25 A. I can see where Mr. Grant begins.</p> <p style="text-align: right;">66</p>	<p>1 specific issue. 2 Q. If you will turn to Page 239. 3 MR. FARR: What page, Caroline? 4 MS. MACKIE: 239, second to last page. 5 BY MS. MACKIE: 6 Q. And beginning on Line 6, these are your closing 7 comments -- 8 A. Yes. 9 Q. -- to the public and members of the Select 10 Committee on Redistricting who were helping run 11 this public hearing; is that correct? 12 A. All the members of the Joint Select Committee 13 were invited to participate and appreciate the 14 fact that some of them were able to be at the 15 satellite locations to help it be smoothly run 16 and to listen to the comments. 17 Q. Okay. And you say that: 18 "...we will have a chance to digest 19 all the information we received today 20 and try to establish some criteria upon 21 which we would like to draw these maps 22 that would coincide with what the court 23 decision was read." 24 My question is: What did you do with 25 the criteria after this public hearing?</p> <p style="text-align: right;">68</p>

<p>1 A. If there was anything that we felt was 2 necessary, we would have refined it prior to 3 submitting it to the full Select Committee on 4 Tuesday the 10th -- excuse me, at 10:00. 5 But the basic criteria are traditional 6 redistricting principles. So we felt they were 7 pretty consistent with what we felt needed to be 8 done to achieve what the Harris court and to 9 comply with the Harris court. 10 Q. The criteria were drafted as of February 15, 11 2016, right? 12 A. Well, if there was any need of making final 13 changes prior to submitting it to the Joint 14 Select Committee for approval, I mean, we would 15 have refined it if need be. 16 Q. Did you make changes to the criteria? 17 A. I can't recall if we did. It's basic 18 redistricting principles that we followed, 19 consistent. 20 Q. You have no recollection of whether you made 21 changes to the criteria following this public 22 hearing? 23 A. I don't. 24 Q. Okay. You can set this notebook to the side. I 25 don't think we'll come back to it.</p> <p style="text-align: right;">69</p>	<p>1 Q. Okay. If you will turn to Tab 1, can you 2 identify this transcript for us? 3 A. Yes. It appears to be a transcript of the -- 4 should be the Joint House and Senate Committee 5 on Redistricting, yes. 6 Q. Was this the first meeting of the Joint 7 Committee on Redistricting? 8 A. Yes. 9 Q. Who appointed the members of that committee? 10 A. Senator Berger and Speaker Moore. 11 Q. And did Senator Berger and Speaker Moore also 12 determine the size of that committee? 13 A. Yes. 14 Q. Did they also determine the political makeup of 15 that committee? 16 A. They chose the members of the committee, yes, 17 ma'am. 18 Q. Did you have any input into who would be members 19 of that committee? 20 A. I don't recall if I did comment about that or 21 not to Senator Berger. I can't remember. 22 Q. Do you know if Representative Lewis had input on 23 the makeup of the Select Committee on 24 Redistricting? 25 A. I don't know the answer to that.</p> <p style="text-align: right;">71</p>
<p>1 I'm going to hand you what we will mark 2 as Exhibit 34. 3 (WHEREUPON, Plaintiffs' Exhibit 34 was 4 marked for identification.) 5 MR. FARR: Thank you, Caroline. Thank 6 you for doing this. I know it's a pain. 7 MS. MACKIE: Do you have it. 8 BY MS. MACKIE: 9 Q. And, Senator Rucho, just to make things a little 10 bit easier, there is a table of contents in the 11 front. 12 A. Yes, ma'am. 13 Q. And what Exhibit 34 has in it are the Joint 14 Committee meetings, the House Committee meetings 15 and the Senate Committee meetings. And also, 16 just for the record, there is a typo on Number 5 17 on the table of contents. That should be 18 February 19, not 17. 19 MR. FARR: Which one is that? 20 MS. MACKIE: Number 5, the House 21 Committee meeting is February 19th. 22 BY MS. MACKIE: 23 Q. Senator Rucho, have you seen these transcripts 24 before? 25 A. I've had a chance to review most of them.</p> <p style="text-align: right;">70</p>	<p>1 Q. But for yourself, you may have, you just don't 2 remember? 3 A. Correct. 4 Q. Do you remember having conversations with 5 Senator Berger about the committee just in 6 general? 7 A. Once we established a schedule, I'm sure at some 8 point we had a chance to discuss time scheduling 9 and things of that sort -- 10 Q. Okay. 11 A. -- to meet the 19th deadline. 12 Q. Right. In this first meeting, you testified 13 this was the first meeting and then met on the 14 16th? 15 A. Yes, ma'am. Sorry. 16 Q. What was the role of the committee? 17 A. Well, the committee was going to have an 18 opportunity to take up the criteria that 19 Representative Lewis and I were able to put 20 together in establishing how the map or how the 21 maps -- the map would be drawn to meet the needs 22 or the requirements of the Harris court. 23 Q. Did Dr. Hofeller attend this committee meeting? 24 A. No, ma'am. 25 Q. Did you send the transcript to him?</p> <p style="text-align: right;">72</p>

<p>1 A. No, ma'am.</p> <p>2 Q. Did you and Representative Lewis meet to prepare</p> <p>3 for this meeting?</p> <p>4 A. I don't know if it was a specific time, but, of</p> <p>5 course, we discussed it, what we wanted to</p> <p>6 achieve and how we were going to do it.</p> <p>7 Q. Would you have had that discussion in person or</p> <p>8 by telephone or by e-mail?</p> <p>9 A. Either in person or by phone, yes, ma'am.</p> <p>10 Q. Do you remember one or the other?</p> <p>11 A. I can't be specific. I know we communicated to</p> <p>12 make sure that we were prepared to present the</p> <p>13 criteria.</p> <p>14 Q. Did you look at any documents to prepare for</p> <p>15 this meeting?</p> <p>16 MR. FARR: For the committee hearing?</p> <p>17 MS. MACKIE: The committee hearing,</p> <p>18 yes.</p> <p>19 THE WITNESS: Other than making sure</p> <p>20 that we knew exactly what we wanted presented,</p> <p>21 the agenda and the -- who was going to present</p> <p>22 the criteria and who would chair, that kind of</p> <p>23 thing, and that was discussed between myself and</p> <p>24 Representative Lewis.</p> <p>25 BY MS. MACKIE:</p> <p style="text-align: right;">73</p>	<p>1 Common Cause lawsuit?</p> <p>2 A. That's what it says.</p> <p>3 Q. Okay. Did you help provide answers for the</p> <p>4 questions on this document?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know if your -- well, if you'll look at</p> <p>7 Question Number 3 on Page 5. Question 3 asked</p> <p>8 for identification of all persons who assisted</p> <p>9 in responding, and the response says:</p> <p>10 "Counsel for legislative defendants</p> <p>11 assisted in responding to all</p> <p>12 interrogatories."</p> <p>13 Do you know who that means by counsel</p> <p>14 for legislative defendants?</p> <p>15 A. I don't -- I don't know who that would be</p> <p>16 specifically.</p> <p>17 Q. So you have no knowledge of who responded or</p> <p>18 assisted in responding to these discovery</p> <p>19 requests?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Okay. If you'll look at sort of the second half</p> <p>22 of this document, there are some documents</p> <p>23 attached to it that have what lawyers call a</p> <p>24 Bate stamp at the bottom. It's DEF 0001 and so</p> <p>25 on. Do you see those documents?</p> <p style="text-align: right;">75</p>
<p>1 Q. Other than the agenda, did you look at any</p> <p>2 documents?</p> <p>3 A. Not that I can recall. Well, I mean, of course</p> <p>4 the criteria that we submitted.</p> <p>5 Q. Okay. That was going to be my question.</p> <p>6 A. Yeah.</p> <p>7 Q. So you did look at Exhibit 24 which was the</p> <p>8 criteria or some version -- was it some version</p> <p>9 of Exhibit 24?</p> <p>10 A. I -- it was -- yes.</p> <p>11 Q. Okay. I'm sorry to do this to you, we're going</p> <p>12 to sort of move back and forth between some</p> <p>13 exhibits. Keep this one out because we will</p> <p>14 come back to it.</p> <p>15 I'm going to hand you what we will mark</p> <p>16 as Exhibit 35.</p> <p>17 (WHEREUPON, Plaintiffs' Exhibit 35 was</p> <p>18 marked for identification.)</p> <p>19 BY MS. MACKIE:</p> <p>20 Q. Senator Rucho, have you seen this document</p> <p>21 before?</p> <p>22 A. No, ma'am, I don't recall seeing it.</p> <p>23 Q. Can you identify it as Defendant's Responses to</p> <p>24 Plaintiffs' First Set of Interrogatories and</p> <p>25 Request for Production of Documents in the</p> <p style="text-align: right;">74</p>	<p>1 A. Yes, DEF and then going from --</p> <p>2 Q. From 1 to 41.</p> <p>3 A. Okay. Yes.</p> <p>4 Q. Are these materials from the February 16th Joint</p> <p>5 Committee meeting?</p> <p>6 A. The 1 and 2 looks like they're off of the</p> <p>7 website. I don't think I looked at them other</p> <p>8 than what they do is list the committee members.</p> <p>9 Q. And DEF 0000 -- several 0's and then a 3, is</p> <p>10 that the meeting notice that you sent out for</p> <p>11 the February 16th hearing for the Joint Select</p> <p>12 Committee on Redistricting?</p> <p>13 A. That appears to be the meeting notice.</p> <p>14 Q. And it's sent from a William -- you'll have to</p> <p>15 help me with the pronunciation of his last name.</p> <p>16 A. Verbiest.</p> <p>17 Q. Verbiest.</p> <p>18 A. That was the -- my legislative assistant.</p> <p>19 Q. Whose name you could not recall earlier.</p> <p>20 A. Right.</p> <p>21 Q. Okay, glad we cleared that up.</p> <p>22 A. And he was the -- he ran the committee for us as</p> <p>23 far as staffing.</p> <p>24 Q. Okay.</p> <p>25 A. Thank you. I must be getting old.</p> <p style="text-align: right;">76</p>

<p>1 Q. We all are.</p> <p>2 If you will turn to Page 9. And can</p> <p>3 you tell me what this is.</p> <p>4 A. And that is -- you're talking about DEF and the</p> <p>5 last number is 9?</p> <p>6 Q. Yes.</p> <p>7 A. It's titled 2016 Contingent Congressional Plan</p> <p>8 Proposed Criteria, Submitted by David Lewis, and</p> <p>9 that looks like one of the criteria that we were</p> <p>10 up for discussion.</p> <p>11 Q. Okay. And the first one up for discussion was</p> <p>12 equal population; is that right?</p> <p>13 A. That's the one-person, one-vote, yes, ma'am.</p> <p>14 Q. And that was the first criteria submitted to the</p> <p>15 committee on February 16th?</p> <p>16 A. I don't know if it was the first, if there's an</p> <p>17 order or something of that sort, but that was</p> <p>18 one of the criteria that was included in the</p> <p>19 criteria.</p> <p>20 Q. The transcript would reflect the order that the</p> <p>21 criteria were presented, right?</p> <p>22 A. Then I would say to you that that was the first</p> <p>23 one that was discussed.</p> <p>24 Q. Okay. When you presented the criteria to the</p> <p>25 Select Committee, why did you present them one</p> <p style="text-align: right;">77</p>	<p>1 population criterion?</p> <p>2 A. That is a requirement of one-person, one-vote.</p> <p>3 And I believe the number 733,498 and/or 99, but</p> <p>4 there is zero deviation in the population of</p> <p>5 each of the congressional districts.</p> <p>6 Q. Who wrote the language that's on this -- the</p> <p>7 page DEF 9?</p> <p>8 A. Who --</p> <p>9 Q. Who?</p> <p>10 A. -- wrote it?</p> <p>11 Q. Uh-huh. Yes.</p> <p>12 A. I don't know.</p> <p>13 Q. Did you and Representative Lewis both support</p> <p>14 this criterion?</p> <p>15 A. Yes.</p> <p>16 Q. Did Dr. Hofeller provide input on this</p> <p>17 criterion?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. Did he review the language that's on page DEF 9</p> <p>20 before you submitted it to the committee?</p> <p>21 A. Did who?</p> <p>22 Q. Dr. Hofeller.</p> <p>23 A. Not that I can recall. We didn't submit it to</p> <p>24 him, so...</p> <p>25 Q. And the next page, Page 10, does that show the</p> <p style="text-align: right;">79</p>
<p>1 by one?</p> <p>2 A. Primarily to be able to have discussion on each</p> <p>3 of the criteria and to -- and I believe we</p> <p>4 actually voted on and recorded vote on every one</p> <p>5 of the criteria.</p> <p>6 Q. And so you handed out what is on page DEF 00009</p> <p>7 by itself to the committee; is that right?</p> <p>8 A. I don't recall if it was done completely and</p> <p>9 specifically, whichever way it was handed out so</p> <p>10 that it could be discussed one point at a time.</p> <p>11 Q. Why didn't you give out all of the criteria at</p> <p>12 one time?</p> <p>13 A. Probably would have confused the issue. What we</p> <p>14 were trying to do was establish the criteria</p> <p>15 that we believed was necessary for us to comply</p> <p>16 with the Harris case order.</p> <p>17 Q. Did you think it was important that members of</p> <p>18 the committee be able to see the full criteria</p> <p>19 at one time when they were debating and voting</p> <p>20 on the criteria?</p> <p>21 A. Never thought about that. Just wanted to make</p> <p>22 sure we had a complete discussion on each of</p> <p>23 them, each of the eight that were -- that were</p> <p>24 part of the criteria.</p> <p>25 Q. Okay. What is your understanding of the equal</p> <p style="text-align: right;">78</p>	<p>1 committee vote on the first criterion?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Okay. If you will turn to the next page,</p> <p>4 DEF 11, what is this one?</p> <p>5 A. Again, one of the criteria that was submitted,</p> <p>6 and this one deals with contiguity and it talks</p> <p>7 about the fact that congressional districts</p> <p>8 should be comprised of counties that are</p> <p>9 adjacent and contiguous with one another, no</p> <p>10 kind of point contact which has been done in the</p> <p>11 past. And then, of course, parts of the coast</p> <p>12 we have the islands, the water would have been</p> <p>13 sufficient for the contiguity.</p> <p>14 Q. Explain what is meant by contiguity by water is</p> <p>15 sufficient.</p> <p>16 A. At best I can, not being an attorney, there are</p> <p>17 islands that are off the coast and they have</p> <p>18 water between them or you have a river running</p> <p>19 between two parts of a city and the water would</p> <p>20 not show that it's not contiguous with one part</p> <p>21 and the other, meaning adjacent to each other in</p> <p>22 part of it.</p> <p>23 Q. So under this criterion, would a district that</p> <p>24 connected Wilmington to Nags Head be contiguous</p> <p>25 by water?</p> <p style="text-align: right;">80</p>

<p>1 A. Between Wilmington and Nags Head?</p> <p>2 Q. Yes.</p> <p>3 A. I can't see that being a contiguous.</p> <p>4 In essence, I'm not talking about the</p> <p>5 ocean. We're talking about bodies of water or</p> <p>6 water, you know, between islands off or right</p> <p>7 next to where you have the lion's share of the</p> <p>8 district and all the counties are involved in</p> <p>9 it. So I would be surprised if that would be a</p> <p>10 contiguous district.</p> <p>11 Q. Did you have conversations with Dr. Hofeller</p> <p>12 about contiguity by water?</p> <p>13 A. No, but somewhere, either something passed by</p> <p>14 the General Assembly to clarify this issue, and</p> <p>15 I don't think it's in the Constitution, but this</p> <p>16 was how the language was so that there wouldn't</p> <p>17 be any abuses of what you described going from</p> <p>18 Wilmington to Nags Head.</p> <p>19 Q. Okay. So a district that connected Wilmington</p> <p>20 to Nags Head would be an abuse?</p> <p>21 A. Would be?</p> <p>22 Q. Would be an abuse.</p> <p>23 A. I would just say to you that I don't think it</p> <p>24 would -- I don't believe that that's what the</p> <p>25 term "contiguity" would mean going outside the</p> <p style="text-align: right;">81</p>	<p>1 criterion in the Saturday meeting with</p> <p>2 Dr. Hofeller or that --</p> <p>3 A. I don't -- I tell you I don't know if</p> <p>4 Dr. Hofeller was there that day.</p> <p>5 Q. That's right.</p> <p>6 Did you discuss it at that -- well --</p> <p>7 A. I mean, it's if traditional criteria, then these</p> <p>8 are the things that we believed would have been</p> <p>9 required for us to have a legal map that was</p> <p>10 ready to be presented to the court and would</p> <p>11 find no resistance to approval, and so this is</p> <p>12 part of the traditional redistricting</p> <p>13 principles.</p> <p>14 Q. Did you and Representative Lewis both support</p> <p>15 this criterion?</p> <p>16 A. Yes.</p> <p>17 Q. And did you discuss this specific criterion of</p> <p>18 contiguity with Dr. Hofeller on that Monday or</p> <p>19 Tuesday, February 8th or 9th?</p> <p>20 A. Those were part of the traditional redistricting</p> <p>21 principles that should have been included in our</p> <p>22 discussion, and I'm assuming we did.</p> <p>23 Q. So, yes, you did?</p> <p>24 A. I would say as part of this, you know,</p> <p>25 establishing the guidelines for him to know what</p> <p style="text-align: right;">83</p>
<p>1 ocean.</p> <p>2 I'm talking about rivers and islands</p> <p>3 that would be off -- still part of the same</p> <p>4 county but off the -- you know, off the</p> <p>5 mainland.</p> <p>6 Q. Who wrote this language on Page DEF 11?</p> <p>7 A. I don't recall.</p> <p>8 Q. And do you know when it was written?</p> <p>9 A. It was written when the criteria were prepared</p> <p>10 for the Joint Committee.</p> <p>11 Q. Which was sometime the week of February 8th?</p> <p>12 A. When it was being put together. I'm assuming</p> <p>13 that would be the timeframe.</p> <p>14 Q. And when was this criterion actually developed?</p> <p>15 A. This specific one or --</p> <p>16 Q. Yes.</p> <p>17 A. -- contiguity?</p> <p>18 Q. This specific contiguity?</p> <p>19 A. You mean as part of ours?</p> <p>20 Q. Yes.</p> <p>21 A. My understanding is it has been part of the</p> <p>22 traditional redistricting principles and</p> <p>23 therefore that's why it was included in the</p> <p>24 criteria.</p> <p>25 Q. Did you discuss contiguity as one of the</p> <p style="text-align: right;">82</p>	<p>1 was to be drawn, yes.</p> <p>2 Q. Okay. Thank you.</p> <p>3 Let's see. Did Dr. Hofeller review</p> <p>4 this written criterion?</p> <p>5 A. I think I've already answered that question.</p> <p>6 Q. Was that for this one?</p> <p>7 A. For all of them.</p> <p>8 Q. So he did not review any of these written --</p> <p>9 A. No, ma'am.</p> <p>10 Q. The next page, DEF 12, does that show the</p> <p>11 committee vote on this criterion?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. If you will turn to the next page, DEF 13. What</p> <p>14 is this criterion?</p> <p>15 A. This is the political data, talking about the</p> <p>16 elections that would have been included in the</p> <p>17 election results that would have been included</p> <p>18 in the statewide elections.</p> <p>19 As a matter of fact, I can read it and</p> <p>20 probably explain it a lot clearer for you. And</p> <p>21 that is:</p> <p>22 "The only data other than population</p> <p>23 data to be used to construct congressional</p> <p>24 districts shall be election results in</p> <p>25 statewide contests since 2008, not</p> <p style="text-align: right;">84</p>

<p>1 including the last two presidential 2 contests. 3 "Data identifying the race of 4 individuals or voters shall not be used 5 in the construction or consideration of 6 districts in the 2016 Contingent 7 Congressional. Voting districts (VTDs) 8 should be split only when necessary to 9 comply with zero deviation population 10 requirements set forth above in order to 11 ensure integrity of political data." 12 Q. When was this criterion established? 13 A. Same time as we were putting and defining the 14 rest of them. 15 Q. And when was this actual language written? 16 A. Specifically this language in preparation for 17 the handout to the committee. 18 Q. So this was criteria that you discussed in the 19 Monday or Tuesday meeting with Dr. Hofeller and 20 then sometime later that week it was put into 21 written form? 22 A. It was discussed with Dr. Hofeller so he had the 23 guidelines to be able to draw the map that would 24 have complied with the Harris order, and this is 25 how and what we would have expected to be.</p> <p style="text-align: right;">85</p>	<p>1 how many others it might have included. 2 Q. At least based on this language, those are the 3 only two excluded, right? 4 A. I would assume that would be correct. I can't 5 speak clearly on it. 6 Q. The written criterion does not exclude the 2012 7 lieutenant governor race? 8 A. The written does not exclude it. 9 Q. Did you have discussions with anyone about the 10 relative weight that should be given to the 11 elections that were included in this criterion? 12 A. Okay, repeat that again. 13 Q. Let me back up. 14 Did you and Representative Lewis have 15 any conversations about how to use these 16 election results? 17 A. Did we -- I'm not sure I understand how we used 18 them. I used them in helping -- getting the 19 political data for us to -- the election result 20 data for Dr. Hofeller and ourselves to draw 21 districts that would have complied with the 22 Harris case. 23 Q. Let me ask it a different way. Do you know how 24 Dr. Hofeller used these races when he was 25 drawing the maps?</p> <p style="text-align: right;">87</p>
<p>1 Q. Who decided that the presidential contest should 2 not be included in the election results 3 considered? 4 A. Representative Lewis and myself, along with 5 contact advice with our counsel reflected what 6 the Harris court said in regard to not wanting 7 to or not feeling comfortable with the 8 Obama-McCain election in 2008, and therefore the 9 McCain -- excuse me -- the Romney and Obama 10 election in 2012, that the court was not 11 comfortable with those elections, and so we 12 chose not to include them in the political data. 13 Q. Did you include the 2012 lieutenant governor 14 race? 15 A. I don't have that before me. I can't remember 16 specifically which ones were included, but -- 17 Q. But based on this definition, that would be a 18 statewide contest since 2008, right? 19 A. It was, but specifically the court said that 20 they were not comfortable with including the 21 presidential race. 22 Q. So was the 2008 and 2012 the only statewide 23 contest that you excluded within that timeframe? 24 A. I don't recall. I mean, I don't remember the 25 ones that we included in there specifically or</p> <p style="text-align: right;">86</p>	<p>1 A. No, ma'am. 2 Q. Did you give him any instructions on how to use 3 the election results? 4 A. No, ma'am. 5 Q. Who provided the election results to 6 Dr. Hofeller? 7 A. I'm assuming it came from the state computer, 8 Mr. Frye. 9 Q. Did you instruct Mr. Frye to send these results 10 to Mr. Hofeller? 11 A. I didn't, no, ma'am. It would have been -- I 12 think Dr. Hofeller reported or testified 13 yesterday that the state computer, all that was 14 inputted and then he received that information, 15 at least that's my best recollection. 16 Q. So you -- when this criteria was presented to 17 the committee, did you have an understanding of 18 how Dr. Hofeller was going to use these election 19 results in drawing the maps? 20 A. No, ma'am. 21 Q. Was it your understanding that he would give 22 each race -- and by race, I mean election 23 contest -- the same amount of weight? 24 A. I never discussed that with him. 25 Q. Okay. Did the committee provide any input on</p> <p style="text-align: right;">88</p>

<p>1 the weight that should be given to these</p> <p>2 election results?</p> <p>3 A. That was not discussed in the committee.</p> <p>4 Q. Did Dr. Hofeller provide any input on this</p> <p>5 criterion?</p> <p>6 A. No.</p> <p>7 Q. And the next page, DEF 14, does that show the</p> <p>8 committee vote on the political data criterion?</p> <p>9 A. Yes, it appears to.</p> <p>10 Q. And you and Representative Lewis both supported</p> <p>11 this criteria?</p> <p>12 A. Yes.</p> <p>13 Q. If you will turn to the next page, DEF 15. And</p> <p>14 can you explain what this criterion is?</p> <p>15 A. This is the one dealing with partisan advantage</p> <p>16 and the -- it's probably easier for me just to</p> <p>17 read it.</p> <p>18 "The partisan makeup of the</p> <p>19 congressional delegation under the</p> <p>20 enacted plan is 10 Republican and</p> <p>21 3 Democrats. The Committee shall make</p> <p>22 reasonable efforts to construct districts</p> <p>23 in 2016 Contingent Congressional Plan to</p> <p>24 maintain the current partisan makeup of</p> <p>25 North Carolina's congressional</p> <p style="text-align: right;">89</p>	<p>1 Q. Are you saying that the 10-3 is a result of</p> <p>2 applying the other adopted criteria?</p> <p>3 A. All the criteria together was the result you can</p> <p>4 come up with a 10-3 partisan makeup.</p> <p>5 Q. So by having contiguous districts and districts</p> <p>6 made up of whole counties and equal population</p> <p>7 and all of the other seven criteria, it's your</p> <p>8 testimony that the result of applying those is a</p> <p>9 10-3 partisan makeup congressional plan?</p> <p>10 A. By harmonizing all of these together, all of the</p> <p>11 criteria that a 10-3 plan can be achieved.</p> <p>12 Q. Did you have conversations with Dr. Hofeller</p> <p>13 about numbers other than 10-3?</p> <p>14 A. I can't recall specifically other than the fact</p> <p>15 that I guess until Dr. Hofeller could work</p> <p>16 through the criteria what kind of result could</p> <p>17 be developed.</p> <p>18 I mean, at that point there may have</p> <p>19 been discussion as to what's available, what can</p> <p>20 be done, what can't be done, which one gives the</p> <p>21 map that most closely fits the criteria,</p> <p>22 especially dealing with split counties and split</p> <p>23 VTDs. That was important to us because that was</p> <p>24 one of the issues raised by the Harris court.</p> <p>25 Q. But you instructed him that he should draw a map</p> <p style="text-align: right;">91</p>
<p>1 delegation."</p> <p>2 Q. And what is your understanding of what this</p> <p>3 means?</p> <p>4 A. My understanding of it is in the enacted plan</p> <p>5 there was a 10-3 partisan makeup. And by</p> <p>6 following all of the criteria in the -- all</p> <p>7 eight criteria and harmonizing them together, we</p> <p>8 asked if -- at the time if the map could be</p> <p>9 drawn with the same 10-3 opportunity for</p> <p>10 Republicans to have a chance to win in</p> <p>11 districts.</p> <p>12 Q. Why 10-3?</p> <p>13 A. It was probably a combination of meeting all of</p> <p>14 the criteria were there, harmonizing them</p> <p>15 together, making sure that -- other than the</p> <p>16 equal population that each of them were met</p> <p>17 where they could be and how they fitted together</p> <p>18 and then working hard to fulfill that as far as</p> <p>19 compact or districts, which meant whole counties</p> <p>20 when possible, reducing the number of split</p> <p>21 counties, which we reduced to 13, and reducing</p> <p>22 the number of split VTDs.</p> <p>23 In essence, this is the result that if</p> <p>24 it could be achieved it was there and that's why</p> <p>25 it was chosen.</p> <p style="text-align: right;">90</p>	<p>1 that will elect 10 Republicans and 3 Democrats?</p> <p>2 MR. FARR: Objection to the form.</p> <p>3 THE WITNESS: I think where it says the</p> <p>4 committee shall make every reasonable effort to</p> <p>5 construct districts in 2016 similar to what the</p> <p>6 10-3 was in the enacted plan. That's what the</p> <p>7 criteria says.</p> <p>8 BY MS. MACKIE:</p> <p>9 Q. And by applying the other criteria, it's your</p> <p>10 testimony that 10-3 is the result?</p> <p>11 MR. FARR: Objection to form.</p> <p>12 THE WITNESS: All I'll say to you is</p> <p>13 that by complying with all of the criteria and</p> <p>14 blending them together, a 10-3 map could be</p> <p>15 delivered.</p> <p>16 Now, I think Representative Lewis</p> <p>17 during the discussion clearly stated that the</p> <p>18 districts aren't as strong as they were, but</p> <p>19 that was something that could be achieved in</p> <p>20 being able to get what was the most compact map</p> <p>21 in regards to whole counties and the most</p> <p>22 compact map in dealing with VTDs being whole.</p> <p>23 So that was the result coming back as the</p> <p>24 criteria were achieved and harmonized.</p> <p>25 BY MS. MACKIE:</p> <p style="text-align: right;">92</p>

<p>1 Q. And you did in fact achieve this goal?</p> <p>2 A. It's not a goal because, in reality, it was</p> <p>3 achieving one of the criteria. Not one of them</p> <p>4 is a priority over another. They were blended</p> <p>5 together.</p> <p>6 Q. But the 2016 congressional election did elect 10</p> <p>7 Republicans and 3 Democrats?</p> <p>8 A. It did in this last election, but in other</p> <p>9 elections -- and if you look back in future</p> <p>10 elections or you look back in the past, I</p> <p>11 believe Roy Cooper as Attorney General was able</p> <p>12 to get elected in -- if I'm not mistaken in all</p> <p>13 of them, so in all 13 districts.</p> <p>14 So any Democrat candidate that chose to</p> <p>15 run that could convince the Democrats,</p> <p>16 unaffiliated voters and any crossover</p> <p>17 Republicans could have won the election as is</p> <p>18 evidenced by -- in the data pack that we had,</p> <p>19 the stat pack that we had.</p> <p>20 Q. Looking at the second sentence of this criteria,</p> <p>21 the committee succeeded in its efforts to</p> <p>22 construct districts to maintain the current</p> <p>23 partisan makeup in the 2016 election, right?</p> <p>24 MR. FARR: Objection.</p> <p>25 THE WITNESS: The committee was able to</p> <p style="text-align: right;">93</p>	<p>1 on the reality of whether people were happy with</p> <p>2 the economy or nationally or statewide and the</p> <p>3 like, so...</p> <p>4 BY MS. MACKIE:</p> <p>5 Q. If you would go back to Page DEF 13, the</p> <p>6 political data criterion.</p> <p>7 A. Yes.</p> <p>8 Q. Why did you use election results instead of</p> <p>9 registration numbers?</p> <p>10 A. The -- our understanding is, and I believe the</p> <p>11 courts have even agreed to it, choosing election</p> <p>12 results is a better predictor of, I think,</p> <p>13 election results going into the future. I mean,</p> <p>14 if I remember the right term.</p> <p>15 Choosing election results is the best</p> <p>16 predictor of what result you might see. There's</p> <p>17 no guarantee that it will happen, but that is a</p> <p>18 predictor of it.</p> <p>19 Q. So understanding election results instead of</p> <p>20 registration numbers would help you achieve a</p> <p>21 10-3 partisan split?</p> <p>22 A. It would help us identify in drawing the</p> <p>23 districts how it was -- you know, how you would</p> <p>24 put the district together. You didn't have</p> <p>25 race. You didn't have any other specifics. You</p> <p style="text-align: right;">95</p>
<p>1 harmonize all of the criteria. Not one of</p> <p>2 them -- this is not given the priority. As you</p> <p>3 blend them altogether, this is what was able to</p> <p>4 be achieved in regards to the map. The next</p> <p>5 election it could be totally different. This</p> <p>6 doesn't guarantee anybody winning the other</p> <p>7 seats.</p> <p>8 And especially if you look at the</p> <p>9 makeup in the stat pack after the map was</p> <p>10 approved, which we got a chance because, in</p> <p>11 reality, Senator McKissick requested it. And it</p> <p>12 wasn't in the original stat pack because it was</p> <p>13 never considered. Race -- he asked that race be</p> <p>14 included in the final stat pack and also</p> <p>15 partisan registration be considered. We didn't</p> <p>16 include that in our original stat pack because</p> <p>17 we never used that in drawing the maps.</p> <p>18 But if you look back, not one of those</p> <p>19 districts outs of the 13 have a majority</p> <p>20 Republican. It requires a combination of</p> <p>21 Republican, unaffiliated and Democrat votes to</p> <p>22 win an election, to be the winning candidate.</p> <p>23 So there's no guarantee that anyone</p> <p>24 would -- would have the same 10-3 going into</p> <p>25 future elections based on the candidate, based</p> <p style="text-align: right;">94</p>	<p>1 had whole counties. And then you were able to</p> <p>2 identify, as Dr. Hofeller talked about</p> <p>3 yesterday, identifying VTDs that you would put</p> <p>4 in or out.</p> <p>5 Q. But using --</p> <p>6 MS. MACKIE: We can take -- do we need</p> <p>7 to take a break. It's probably about time</p> <p>8 anyway.</p> <p>9 THE VIDEOGRAPHER: Off record at</p> <p>10 11:59 a.m.</p> <p>11 (Discussion held off the record.)</p> <p>12 THE VIDEOGRAPHER: On record at</p> <p>13 11:59 a.m.</p> <p>14 BY MS. MACKIE:</p> <p>15 Q. Senator Rucho, my question is: Did using</p> <p>16 election results instead of registration numbers</p> <p>17 help you achieve the partisan advantage goal of</p> <p>18 10 Republicans and 3 Democrats?</p> <p>19 MR. FARR: Objection to form.</p> <p>20 You may answer.</p> <p>21 THE WITNESS: I don't know if it helped</p> <p>22 achieve the partisan results.</p> <p>23 What it did is it allowed those</p> <p>24 districts to be competitive to allow -- give</p> <p>25 Republicans an opportunity to win those</p> <p style="text-align: right;">96</p>

<p>1 elections.</p> <p>2 BY MS. MACKIE:</p> <p>3 Q. Did it allow you to better predict that</p> <p>4 Republicans would win in 10 districts?</p> <p>5 A. Our understanding is that the election results</p> <p>6 does give you that ability to do so.</p> <p>7 Q. Thank you.</p> <p>8 If you'll -- we were actually talking</p> <p>9 about the page DEF 15, partisan advantage. Just</p> <p>10 a couple more questions on that.</p> <p>11 On Page DEF 16, does that reflect the</p> <p>12 committee vote on the partisan advantage</p> <p>13 criterion?</p> <p>14 A. Yes.</p> <p>15 Q. And was that vote on party lines?</p> <p>16 A. It appears to be.</p> <p>17 Q. And did you and Representative Lewis both</p> <p>18 support that criterion?</p> <p>19 A. Yes.</p> <p>20 MS. MACKIE: Now may be a good time to</p> <p>21 break for lunch.</p> <p>22 THE VIDEOGRAPHER: Off record at</p> <p>23 12:01 p.m.</p> <p>24 (Lunch Recess.)</p> <p>25 THE VIDEOGRAPHER: On record at</p> <p style="text-align: right;">97</p>	<p>1 it is something that I would have liked to have</p> <p>2 done in the original but found a lot of</p> <p>3 resistance from then Congressman Watt. So it</p> <p>4 was something that was put together as we read</p> <p>5 the Harris opinion.</p> <p>6 Q. Did you decide to include this as a part of the</p> <p>7 criteria on that Monday or Tuesday when you met</p> <p>8 with Dr. Hofeller?</p> <p>9 A. Well, it originated with reading the opinion,</p> <p>10 but the decision between Representative Lewis</p> <p>11 and myself and our counsel occurred about that</p> <p>12 time.</p> <p>13 Q. And the next page, DEF 18, does that reflect the</p> <p>14 vote on this fifth criteria?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Okay. If you will turn to the next page,</p> <p>17 DEF 19, what is this page talking about?</p> <p>18 A. This one is dealing with compactness. And I'll</p> <p>19 read it so that it will be self-evident.</p> <p>20 "In light of the Harris court's</p> <p>21 criticism of compactness of the First and</p> <p>22 Twelfth Districts, the Committee shall</p> <p>23 make reasonable efforts to construct</p> <p>24 districts in the 2016 Contingent</p> <p>25 Congressional Plan that improves the</p> <p style="text-align: right;">99</p>
<p>1 1:08 p.m.</p> <p>2 BY MS. MACKIE:</p> <p>3 Q. Senator, before the lunch break we were working</p> <p>4 through Exhibit 35. Do you still have that in</p> <p>5 front of you?</p> <p>6 A. Yes, ma'am, I do. Thank you.</p> <p>7 Q. If you will turn to the page with the Bates</p> <p>8 stamp DEF 17.</p> <p>9 A. Yes.</p> <p>10 Q. What is this criterion?</p> <p>11 A. This is one of the eight criterion that you</p> <p>12 discussed, that in order to address a concern</p> <p>13 raised by the Harris court as far as the</p> <p>14 configuration of the 12th district, and I'm just</p> <p>15 citing some comments that was the serpentine</p> <p>16 nature, Representative Lewis and I decided that</p> <p>17 it would be a good thing in trying to comply</p> <p>18 fully with the Harris order to consolidate the</p> <p>19 Congressional District Number 12 within</p> <p>20 Mecklenburg county, and that really is all that</p> <p>21 that talks about.</p> <p>22 Q. When did you develop this criterion?</p> <p>23 A. This specific one?</p> <p>24 Q. Yes.</p> <p>25 A. It was a result of -- actually, if you go back,</p> <p style="text-align: right;">98</p>	<p>1 compactness of the current districts and</p> <p>2 keep more counties and VTDs whole as</p> <p>3 compared to the current enacted plan.</p> <p>4 "Division of counties shall only be</p> <p>5 made for reasons of equalization of</p> <p>6 population, consideration of incumbency</p> <p>7 and political impact. Reasonable efforts</p> <p>8 shall be made not to divide a county into</p> <p>9 more than two districts."</p> <p>10 And we felt in doing so, also</p> <p>11 conforming with what the Harris order was, we</p> <p>12 also were able to -- by consolidating senate</p> <p>13 district -- excuse me -- Congressional</p> <p>14 District 12, it went a large way in producing</p> <p>15 compact districts and keeping many, many</p> <p>16 counties whole.</p> <p>17 Q. How did you measure compactness?</p> <p>18 A. I didn't.</p> <p>19 Q. Okay. Did you consider keeping counties and</p> <p>20 VTDs whole as a way to make compact districts?</p> <p>21 A. Well, we were responding to comments in the</p> <p>22 Harris decision. By consolidating the 12th</p> <p>23 district as we did, it opened up a number of</p> <p>24 opportunities for us to keep whole counties, and</p> <p>25 we felt that that was one of the cornerstones as</p> <p style="text-align: right;">100</p>

<p>1 how to establish compact districts. And of</p> <p>2 course, along with that is you do that -- if you</p> <p>3 keep the VTDs from being split, that also helps.</p> <p>4 Q. Did you have conversations with Dr. Hofeller</p> <p>5 about how to measure compactness?</p> <p>6 A. No.</p> <p>7 Q. How did you evaluate the compactness of the plan</p> <p>8 that he submitted to you and Representative</p> <p>9 Lewis?</p> <p>10 A. Other than looking at it, there was no -- no</p> <p>11 test taken.</p> <p>12 Q. So no mathematical measures?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. When was this criterion adopted -- or</p> <p>15 developed?</p> <p>16 A. During the same period of time we talked about.</p> <p>17 Q. So around that Monday, Tuesday meeting?</p> <p>18 A. Yes.</p> <p>19 Q. Did Dr. Hofeller provide input on this specific</p> <p>20 language?</p> <p>21 A. Had -- provided no input. As to this language,</p> <p>22 his expertise was helpful in achieving our --</p> <p>23 getting this criteria implemented.</p> <p>24 Q. What was his -- what did he say about</p> <p>25 compactness?</p> <p style="text-align: right;">101</p>	<p>1 is if you look at the original enacted map, as</p> <p>2 it was described as being serpentine, it divided</p> <p>3 many counties as it was following the pathway</p> <p>4 along its route, and so we felt that by doing</p> <p>5 that, consolidating it would also give us the</p> <p>6 ability to allow for whole counties all along</p> <p>7 that stretch and that would help us in achieving</p> <p>8 the goal of compactness.</p> <p>9 Q. What about districts on the eastern side of the</p> <p>10 state?</p> <p>11 A. And what?</p> <p>12 Q. Did you consider compactness for those</p> <p>13 districts?</p> <p>14 A. As we worked on CD 1, I think you -- well, first</p> <p>15 of all, the Court had already -- the Supreme</p> <p>16 Court had already made a decision that the way</p> <p>17 CD 1 was originally put together prior to us was</p> <p>18 what would be considered compact, and that was</p> <p>19 why we tended to follow that same -- similar</p> <p>20 design in the enacted map.</p> <p>21 But there were some modifications on</p> <p>22 CD 1 and kept counties whole around it, and by</p> <p>23 doing that it allowed -- allowed a lot of other</p> <p>24 counties to be kept whole because it's -- on one</p> <p>25 side, if it follows the county line, on the</p> <p style="text-align: right;">103</p>
<p>1 A. Didn't.</p> <p>2 Q. You didn't discuss compactness when you met</p> <p>3 with --</p> <p>4 A. We -- on this compactness issue dealing with 12</p> <p>5 being consolidated?</p> <p>6 Q. Well, just the compactness criterion that we're</p> <p>7 looking at right now.</p> <p>8 A. Well, I mean, if what our -- this criteria, if</p> <p>9 implemented along with the other eight -- the</p> <p>10 other seven, achieving that allowed us to have a</p> <p>11 map that would be approved by and accepted by</p> <p>12 the Harris Court. And we felt that going to</p> <p>13 13 -- keeping all the counties whole except for</p> <p>14 13 and 12 VTDs was a major step in achieving</p> <p>15 that effort.</p> <p>16 Q. So my question is what -- what did you talk with</p> <p>17 Dr. Hofeller about with regard to compactness?</p> <p>18 A. That we wanted to consolidate the 12th district</p> <p>19 down to -- and at that point the decision was</p> <p>20 made that Mecklenburg county was the best</p> <p>21 location to accomplish that.</p> <p>22 Q. So by putting the 12th district just into</p> <p>23 Mecklenburg county you would achieve this</p> <p>24 criterion of compactness?</p> <p>25 A. By doing the 12th, yes. But the other advantage</p> <p style="text-align: right;">102</p>	<p>1 other side it doesn't it doesn't break the</p> <p>2 counties. So therefore we had the ability to</p> <p>3 have whole counties.</p> <p>4 Q. So is it your testimony that by making the 1st</p> <p>5 and the 12th districts compact, the other</p> <p>6 districts around those districts were also</p> <p>7 compact?</p> <p>8 MR. FARR: Objection to form, but you</p> <p>9 can answer.</p> <p>10 THE WITNESS: I don't think that's</p> <p>11 properly -- I don't agree with your premise</p> <p>12 because our other districts were compact as was</p> <p>13 originally, and we felt confident that it was in</p> <p>14 the proper design of it.</p> <p>15 But by keeping whole counties as we</p> <p>16 could following the criteria of the eight</p> <p>17 criteria, we were able to, in essence, in the</p> <p>18 interocular test, have the map look better than</p> <p>19 it did prior to that even though we still</p> <p>20 believed that the original map is constitutional</p> <p>21 and will ultimately be judged by that by the</p> <p>22 Supreme Court.</p> <p>23 BY MS. MACKIE:</p> <p>24 Q. The second to last sentence says:</p> <p>25 "Division of counties shall only be</p> <p style="text-align: right;">104</p>

<p>1 made for reasons of equalizing population, 2 consideration of incumbency and political 3 impact." 4 Can you explain what that means? 5 A. Well, as you know, one of the criteria was equal 6 population, which we have as mandatory, and 7 therefore, whenever a county were to be divided, 8 that would be one of the reasons why we did it 9 because of trying to get the equalization of 10 733,498, and so that would be a requirement in 11 the criteria. 12 Secondly, in trying to not double bunk 13 incumbents, there were times that we had to 14 modify the compactness to allow us to achieve 15 that criteria. 16 And then as far as the political 17 impact, and that would be to kind of try to 18 follow the political data. In helping to draw 19 those districts, there had to be some 20 modification in the compactness rule. 21 Q. What do you mean when you say follow the 22 political data? 23 A. Well, in essence, as we were drawing the 24 districts in the -- I say when Dr. Hofeller was 25 drawing the districts, as he was using the</p> <p style="text-align: right;">105</p>	<p>1 the political impact is to what VTDs would be 2 included and not included in that district. 3 Q. So Dr. Hofeller could use election results from 4 2008 to 2012 to decide which VTDs should be 5 included or excluded from a district? 6 A. As long as he conformed with all of the other 7 criteria. That was the key part. It wasn't one 8 being -- overriding any other. They all had to 9 be melded or harmonized together to be able to 10 put together a district -- or excuse me -- 11 district maps that the Harris group -- excuse 12 me -- the Harris court would feel competent in 13 supporting and that's something that they did, 14 so... 15 Q. So the population has to be equal -- 16 A. I'm sorry. Say it again. 17 Q. The population has to be equal in all of the 18 districts? 19 A. As close as reasonably possible. 20 Q. But in terms of deciding who should go into 21 those districts and where the line should be 22 drawn to make that determination, Dr. Hofeller 23 would use the election results? 24 A. In being able to draw the district lines, he 25 does have that capability of using the election</p> <p style="text-align: right;">107</p>
<p>1 election data that was used in trying to 2 determine where the district line would be when 3 a -- when a county was being split, he would be 4 using the political data that would be there. 5 Q. So he could use the political data that was the 6 other criteria that we addressed, the third one 7 on Page DEF 13? 8 A. That was another one of the criteria that we 9 established and that was the election results, 10 and he was using election results to try to 11 achieve the goal of drawing a district to meet 12 the equalization population, one-person, 13 one-vote. It's just a matter of how -- 14 Q. How did he use election results to -- 15 A. Well, let me rephrase that. In having the 16 ability to keep it so that you get one-person, 17 one-vote, you can go ahead and be able to use 18 the data in deciding what part you put in and 19 what part you don't. I think I'm correct in how 20 I say that. 21 Q. Okay. And my question is the term "political 22 impact" in this criteria, how -- what does that 23 mean? 24 A. I would be speculating because I didn't write 25 this, but I'm assuming that we would be called</p> <p style="text-align: right;">106</p>	<p>1 results in deciding what VTD should be or 2 shouldn't be included. 3 Q. And he had that authority? 4 A. Yes. But now you understand it is minimally 5 used because you have 87 counties that are 6 whole. So you're talking about very minuscule 7 changes that would be made to adjust a VTD 8 because there were only 12 VTDs that had to be 9 split, so it isn't rampant. 10 But, again, the key point was all of 11 the eight criteria had to be harmonized for 12 Dr. Hofeller to continue to do what we had asked 13 him to do. 14 Q. And you said that you did not write this 15 language on -- 16 A. You asked me earlier who wrote it. I didn't 17 know who wrote it, but it wasn't me as far as 18 what, you know, the word political impact would 19 be or political data. So I'm giving you my best 20 estimate. 21 Q. Thank you. 22 Did you and Representative Lewis direct 23 that this should be the criteria? 24 A. We actually said that we agreed upon the 25 compactness issue as being one of the criteria</p> <p style="text-align: right;">108</p>

<p>1 and -- but we weren't necessarily the person</p> <p>2 that wrote part of the explanation.</p> <p>3 Q. Did you agree that counties could be split for</p> <p>4 reasons of political impact?</p> <p>5 A. Yes.</p> <p>6 Q. If you'll turn to the next page, DEF 20, does</p> <p>7 that reflect the vote on the compactness</p> <p>8 criterion?</p> <p>9 A. Yes.</p> <p>10 Q. And if you will turn to the next page, 21, what</p> <p>11 is this criterion?</p> <p>12 A. This is part of the redistricting principles</p> <p>13 that allowed for incumbency to be used in</p> <p>14 deciding the district lines. And that is a</p> <p>15 consistent principle that we abided by in the</p> <p>16 original maps, and we tried as best we could to</p> <p>17 achieve that same criteria with incumbency.</p> <p>18 Q. Did you achieve that in the enacted plan in</p> <p>19 2016?</p> <p>20 A. To the best of our ability.</p> <p>21 Q. But in fact there were incumbents who were</p> <p>22 bunked together?</p> <p>23 A. Yes.</p> <p>24 Q. Representative Price and Representative Holding</p> <p>25 were placed in the same district?</p> <p style="text-align: right;">109</p>	<p>1 you presented the criteria to the committee?</p> <p>2 A. They're of equal importance. So there was no --</p> <p>3 there was no -- you could have used any one</p> <p>4 first and any one second. There was no -- it</p> <p>5 was not set up on points. It was all equally</p> <p>6 important.</p> <p>7 Q. And that's true even though the first criterion</p> <p>8 that was debated and presented to the committee</p> <p>9 was equal population which is -- I believe you</p> <p>10 said is mandatory?</p> <p>11 A. Under the Constitution, it is absolutely</p> <p>12 mandatory, but it still is as important as</p> <p>13 anything else. We had to modify when the</p> <p>14 population existed by one vote, one other</p> <p>15 district had that extra vote, like 733,499 would</p> <p>16 have been that. So you always have a way of</p> <p>17 achieving it. Sometimes it isn't ideal, but</p> <p>18 that's as ideal as we could make it.</p> <p>19 Q. If you would turn to Exhibit DEF 23 in the same</p> <p>20 exhibit, Exhibit 35. Can you tell me what this</p> <p>21 is?</p> <p>22 A. Let me read it, please.</p> <p>23 Q. Sure.</p> <p>24 A. It was an amendment on the criteria in Number 13</p> <p>25 put forth by Representative Stam, a member of</p> <p style="text-align: right;">111</p>
<p>1 A. Are we talking '16?</p> <p>2 Q. 2016, yes.</p> <p>3 A. Yes, they were.</p> <p>4 Q. So you did not actually achieve this goal?</p> <p>5 A. You have to understand one of the criteria does</p> <p>6 not supersede any of the others. They're all</p> <p>7 blended together. You cannot just pick one and</p> <p>8 say we're doing this exclusively. This is a</p> <p>9 blending process. So we tried to take all of</p> <p>10 them into consideration as the map was drawn.</p> <p>11 Q. Did you achieve the equal population goal?</p> <p>12 A. As reasonably as it can be. We were within</p> <p>13 one -- one point.</p> <p>14 Q. Is that a "yes"?</p> <p>15 A. Yes.</p> <p>16 Q. Were these criteria discussed and debated at the</p> <p>17 committee hearing on February 16th?</p> <p>18 A. Let me make sure we're talking about the right</p> <p>19 date here.</p> <p>20 Yes.</p> <p>21 Q. And let me just ask you to look at Page DEF 22.</p> <p>22 Does that reflect the vote on incumbency as a</p> <p>23 part of the criteria?</p> <p>24 A. Yes. Good vote. 31 to 1 basically.</p> <p>25 Q. Was there any significance to the order in which</p> <p style="text-align: right;">110</p>	<p>1 the committee, and it's probably just as easy</p> <p>2 for me to read it to you, and that is:</p> <p>3 "The first sentence of Political</p> <p>4 Data Criteria should read as written:</p> <p>5 "The only data other than population</p> <p>6 data to be used to construct congressional</p> <p>7 districts shall be election results in</p> <p>8 statewide contests since January 2008,</p> <p>9 not including the last two presidential</p> <p>10 contests," which is consistent.</p> <p>11 I'll be honest, I don't remember</p> <p>12 exactly why that date was put in there, but</p> <p>13 there must have been an important reason to</p> <p>14 include that change because it was evident that</p> <p>15 the vote was bipartisan.</p> <p>16 Q. And just so we're clear, the change was to add</p> <p>17 January 1st to the year 2008?</p> <p>18 A. That really is the change.</p> <p>19 Q. Okay. And that's the extent of that amendment?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And that amendment passed?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. If you will turn to the next page, DEF 25, and</p> <p>24 if you'll read it and then let me know what this</p> <p>25 proposed criteria is.</p> <p style="text-align: right;">112</p>

<p>1 A. That was an amendment put forward by Senator 2 Blue, a member of the committee, and just as 3 easy if I read it. 4 "The second sentence of Compact 5 Criteria 6 should read as written: 6 "Division of counties shall only be 7 made for reasons of equalizing population 8 and for reasons of complying with the 9 federal law." 10 That eliminated the issue of incumbency 11 which we felt was part of the traditional -- and 12 the political impact was also eliminated in 13 that, but, in essence, we felt that it was 14 important to remain consistent with the 15 traditional redistricting principles. 16 And the vote -- I can't tell -- 23-11, 17 I think. I can't make that one out. 18 Q. I think that's right. 19 So you felt it was important to keep -- 20 to allow Dr. Hofeller to divide counties for 21 reasons of political impact? 22 A. I would say to you that the striking incumbency 23 and the political impact was part of the total 24 criteria that we established and felt that that 25 was how we had to achieve getting the Harris</p> <p style="text-align: right;">113</p>	<p>1 the decision was to reject this amendment and 2 stay consistent with our eight criteria so that 3 we would stay in line with what we believed was 4 the -- what the court would support in regard to 5 the maps we drew. 6 Q. Did you instruct Dr. Hofeller to preserve 7 communities of interest? 8 A. We instructed Dr. Hofeller to follow the 9 criteria. 10 Q. Did you instruct Dr. Hofeller to preserve 11 communities of interest? 12 MR. FARR: Object to the form, but you 13 can answer. 14 THE WITNESS: That's not in one of the 15 criteria; so therefore that was not one of the 16 guidelines that Dr. Hofeller had to follow. 17 BY MS. MACKIE: 18 Q. Did you talk to Dr. Hofeller after this 19 committee hearing? And let me -- let me 20 rephrase that. 21 Did you convey any information that you 22 learned from the committee hearing to 23 Dr. Hofeller following the committee hearing? 24 A. Specifically about the committee hearing? 25 Q. Yes.</p> <p style="text-align: right;">115</p>
<p>1 court to approve our map and to comply with what 2 they had requested of us. So we felt that 3 changing that criteria at that point would -- 4 could have been counterproductive possibly. 5 Q. And my question is: You wanted Dr. Hofeller to 6 have the ability to divide counties for reasons 7 of political impact? 8 A. That was in the original criteria and that's 9 what we felt was important to continue to have. 10 Q. And if you will turn to DEF 27, the same 11 question: What is this proposed criteria? 12 A. The -- and I'll read it. 13 "The second sentence of Compact 14 Criteria Number 6 should read as written: 15 "Division of counties shall only be 16 made for reasons of equalizing population," 17 adding "preserving communities defined by 18 actual shared interests, consideration of 19 incumbency and political impact." 20 There was a discussion during the 21 meeting about what and how do you define, in 22 essence, communities of interest, and we spoke 23 with staff and they reported to the committee 24 that there is no clear definition of what 25 communities of interest actually were, and so</p> <p style="text-align: right;">114</p>	<p>1 A. No. 2 Q. Did you convey any information about proposed 3 amendments to the criteria to Dr. Hofeller? 4 A. No. 5 Q. And did you convey any information about adopted 6 amendments to the criteria to Dr. Hofeller? 7 A. I don't remember speaking with Dr. Hofeller 8 directly about the dealings of the committee. 9 Q. And Page DEF 28, does that reflect the vote on 10 the amendment submitted by Senator Smith-Ingram? 11 A. Yes. 12 Q. And was that amendment rejected by the 13 committee? 14 A. Yes. 15 Q. If you'll turn to the next page, DEF 29, is this 16 a proposed criterion to add communities of 17 interest? 18 A. Yes. 19 Q. And I won't belabor the same questions we just 20 went through since we just talked about 21 communities of interest, but you did not convey 22 any information to Dr. Hofeller about this 23 proposed criteria, did you? 24 A. Based on my last answer, we asked staff to give 25 us a clear definition of what communities of</p> <p style="text-align: right;">116</p>

<p>1 interest; there was not one. So it would make</p> <p>2 no sense to put in something into a criteria</p> <p>3 that we couldn't have defined.</p> <p>4 Q. And was this amendment rejected by the committee</p> <p>5 on Page DEF 30?</p> <p>6 A. Yes.</p> <p>7 Q. If you will go back to the notebook which is</p> <p>8 Exhibit 34, and we're going to look at some</p> <p>9 specific things within Tab 1, which is the</p> <p>10 transcript of that committee hearing on</p> <p>11 February 16th.</p> <p>12 If you'll turn to Page 8. And if you</p> <p>13 need to read it, you can, but what I would like</p> <p>14 to know is the statement that Representative</p> <p>15 Lewis makes beginning at the bottom of Page 8</p> <p>16 that continues on to Page 12.</p> <p>17 A. I would like to read it.</p> <p>18 Q. Okay.</p> <p>19 A. Up to the end of Chairman Lewis's comment,</p> <p>20 right?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p> <p>23 Q. Did someone write the language of this</p> <p>24 statement?</p> <p>25 A. I don't know.</p> <p style="text-align: right;">117</p>	<p>1 A. I see it.</p> <p>2 Q. Do you agree with his statement?</p> <p>3 A. Based on what we understood the law required of</p> <p>4 us and especially after having to follow the --</p> <p>5 what was required of us by the Harris court, it</p> <p>6 was -- in achieving our criteria, the term</p> <p>7 political gerrymandering was something that</p> <p>8 Representative Lewis uses.</p> <p>9 I don't know -- I see nothing wrong</p> <p>10 with that comment.</p> <p>11 Q. Would you agree that the 2016 congressional --</p> <p>12 Contingent Congressional Plan was a political</p> <p>13 gerrymander?</p> <p>14 MR. FARR: Objection to the form.</p> <p>15 THE WITNESS: No, because of the fact</p> <p>16 that it followed all of the -- it wasn't just</p> <p>17 politics. It followed all of the criteria that</p> <p>18 were established, traditional criteria,</p> <p>19 redistricting criteria that would be expected of</p> <p>20 us and in addition to which the other requests</p> <p>21 that were made by the Harris court in</p> <p>22 outlining -- in how we interpreted and had to</p> <p>23 abide by their order.</p> <p>24 BY MS. MACKIE:</p> <p>25 Q. Did you tell Representative Lewis that you</p> <p style="text-align: right;">119</p>
<p>1 Q. Why did Representative Lewis make this statement</p> <p>2 before the committee?</p> <p>3 A. The way we were handling the Joint Committee, I</p> <p>4 was going to chair it and he was going to</p> <p>5 present the criteria.</p> <p>6 Q. So you were running the meeting but he would be</p> <p>7 the one actually making presentations?</p> <p>8 A. Well, if you've seen legislative meetings, the</p> <p>9 chairman is there and then you have a person, a</p> <p>10 representative or senator in this case because</p> <p>11 it was a joint, that would present what was to</p> <p>12 be taken up by and debated and voted on by the</p> <p>13 committee.</p> <p>14 Q. And on Page 12, Line 8, it says: "Mr. Chairman,</p> <p>15 at your direction."</p> <p>16 Did Representative Lewis say that</p> <p>17 because you were chairing the committee?</p> <p>18 A. That's proper protocol.</p> <p>19 Q. Okay. Thank you.</p> <p>20 If you'll turn to Page 48, and on</p> <p>21 Line 4 through 6, Representative Lewis says:</p> <p>22 "I acknowledge freely that this</p> <p>23 would be a political gerrymander, which</p> <p>24 is not against the law."</p> <p>25 Do you see that?</p> <p style="text-align: right;">118</p>	<p>1 disagreed with his characterization?</p> <p>2 A. I don't.</p> <p>3 Q. You don't disagree?</p> <p>4 A. I said that is how he defined it, and I'm</p> <p>5 comfortable with how he did.</p> <p>6 Q. So would you agree, then, that a map that is</p> <p>7 likely to elect 10 Republicans and 3 Democrats</p> <p>8 is a political gerrymander?</p> <p>9 MR. FARR: Objection to the form.</p> <p>10 THE WITNESS: No, because of the fact</p> <p>11 that it followed the criteria that were</p> <p>12 established. Not one -- the politics didn't</p> <p>13 take precedent, not one of them took precedent,</p> <p>14 and they were all treated equally. It was a</p> <p>15 harmonization of all of those criteria which</p> <p>16 allowed us to achieve what the court had</p> <p>17 expected of us.</p> <p>18 BY MS. MACKIE:</p> <p>19 Q. So what part of his sentence here that we're</p> <p>20 looking at on Lines 4 through 6 do you agree</p> <p>21 with?</p> <p>22 A. I'm comfortable with his statement.</p> <p>23 Q. Okay. And you're comfortable that it's not</p> <p>24 against the law to draw a political gerrymander?</p> <p>25 MR. FARR: Objection to the form.</p> <p style="text-align: right;">120</p>

<p>1 THE WITNESS: Our understanding is that</p> <p>2 the Supreme Court of the -- the United States</p> <p>3 Supreme Court has never called political</p> <p>4 gerrymander unconstitutional. So therefore we</p> <p>5 followed the law and did so in producing the</p> <p>6 criteria -- the list of criteria that we used in</p> <p>7 meeting the needs and what was expected of us by</p> <p>8 the Harris court.</p> <p>9 BY MS. MACKIE:</p> <p>10 Q. If you will turn to Page 50 and look at Line 7</p> <p>11 through 10. Representative Lewis says:</p> <p>12 "I propose that we draw the maps to</p> <p>13 give a partisan advantage to 10 Republicans</p> <p>14 and 3 Democrats because I do not believe</p> <p>15 it's possible to draw a map with 11</p> <p>16 Republicans and 2 Democrats."</p> <p>17 Do you agree with Representative</p> <p>18 Lewis's statement that I just read?</p> <p>19 A. I will say yes, and I will explain it even</p> <p>20 further.</p> <p>21 In following the criteria that -- and</p> <p>22 meeting all of the criteria as we blend them</p> <p>23 together, the 10-3 map that Representative Lewis</p> <p>24 was describing was doable, something that we</p> <p>25 explained -- we talked about earlier, and</p> <p style="text-align: right;">121</p>	<p>1 the criteria and in addition to -- for which we</p> <p>2 were to follow so we could comply with the</p> <p>3 Harris case.</p> <p>4 And it also authorizes the co-chairs</p> <p>5 and the minority party -- and I know that was at</p> <p>6 that time Senator McKissick was the contact that</p> <p>7 we had directly -- to spend upwards of \$25,000,</p> <p>8 each group, to be able to hire a map drawer to</p> <p>9 come up with a map that they believe would be</p> <p>10 able to meet the criteria and be able to be</p> <p>11 submitted as an example to, of course, the full</p> <p>12 Senate and full House and ultimately, if it</p> <p>13 passes, to the Harris Court, but it just</p> <p>14 authorized those resources to be utilized by</p> <p>15 both the majority and the minority party to have</p> <p>16 access to the computer and offer each group an</p> <p>17 opportunity to submit maps for committee -- the</p> <p>18 Redistricting Committee debate and ultimately to</p> <p>19 the floor.</p> <p>20 We did something very similar to this,</p> <p>21 I believe it was either 50 or \$60,000 that were</p> <p>22 offered for minority members to -- in the Senate</p> <p>23 and in the House to draw maps back in 2011.</p> <p>24 Unfortunately, they didn't take advantage of the</p> <p>25 opportunity to submit maps in any timely manner,</p> <p style="text-align: right;">123</p>
<p>1 apparently the 11-2 that he commented about is</p> <p>2 not.</p> <p>3 So as we had whole counties, as we had</p> <p>4 the limited VTDs, as we met all the other</p> <p>5 criteria, a 10-3 map is something that could be</p> <p>6 achieved but also recognizing the partisan</p> <p>7 advantage only gives Republicans an opportunity</p> <p>8 to win an election in what is a competitive</p> <p>9 district.</p> <p>10 And he did go on to say later on that</p> <p>11 those districts are actually more competitive</p> <p>12 than they were in the 2011 plan.</p> <p>13 Q. If you will go back to Exhibit 35, which is this</p> <p>14 packet that we were just looking at and turn to</p> <p>15 Page DEF 31. And it may also help if you want</p> <p>16 to look in Exhibit 34, Page 130 of the</p> <p>17 transcript.</p> <p>18 Senator Rucho, on Page DEF 31 of</p> <p>19 Exhibit 35, there's a motion for -- three</p> <p>20 motions that were made to the committee. Can</p> <p>21 you explain what those are?</p> <p>22 A. I need an opportunity to read it for a few</p> <p>23 minutes. Okay.</p> <p>24 Q. Sure.</p> <p>25 A. It appears to be an adoption by Senator Hise of</p> <p style="text-align: right;">122</p>	<p>1 and similarly this time they chose not to submit</p> <p>2 a map so we had something to compare and</p> <p>3 contrast.</p> <p>4 Q. Had Dr. Hofeller been engaged before</p> <p>5 February 16, 2016?</p> <p>6 MR. FARR: Objection to the form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: I'd probably say no. To</p> <p>9 the best of my recollection, no.</p> <p>10 BY MS. MACKIE:</p> <p>11 Q. He had not been engaged to draw --</p> <p>12 A. To draw a map, a contingency map?</p> <p>13 Q. Yes.</p> <p>14 A. We never anticipated having to draw one up until</p> <p>15 February 5th at 5:00 or 6:00.</p> <p>16 Q. But you met with Dr. Hofeller on February 8th or</p> <p>17 9th and talked about what the map would look</p> <p>18 like and looked at maps that he had drawn. And</p> <p>19 I believe you --</p> <p>20 A. You're saying engaged, like hired him to --</p> <p>21 Q. When did you hire Dr. Hofeller to draw maps?</p> <p>22 A. You know, I can't recollect that. I did not</p> <p>23 hire him and --</p> <p>24 Q. Who hired him?</p> <p>25 A. I think it was done very similar manner through</p> <p style="text-align: right;">124</p>

<p>1 our legal office.</p> <p>2 Q. Was an engagement letter sent to Dr. Hofeller?</p> <p>3 A. I don't know the answer to that question.</p> <p>4 Q. Did Hofeller submit invoices to you?</p> <p>5 A. Not to me.</p> <p>6 Q. Did he submit invoices to Ogletree Deakins?</p> <p>7 A. To the legal office.</p> <p>8 Q. When did he submit those invoices?</p> <p>9 A. I don't know.</p> <p>10 Q. Did you see them?</p> <p>11 A. No, ma'am.</p> <p>12 Q. How much did Dr. Hofeller charge to draw the</p> <p>13 2016 Congressional Plan?</p> <p>14 A. I have no way of knowing.</p> <p>15 Q. But it presumably would be less than \$25,000</p> <p>16 based on this motion?</p> <p>17 A. I don't know what it was, so I can't comment on</p> <p>18 that.</p> <p>19 Q. So you don't know how much Dr. Hofeller was</p> <p>20 paid?</p> <p>21 A. No, ma'am.</p> <p>22 Q. And you don't know whether he submitted</p> <p>23 invoices?</p> <p>24 A. I'm assuming he did. I don't know how much he</p> <p>25 got paid and how much he charged.</p> <p>125</p>	<p>1 Q. If you will turn to -- it's DEF 34 and there's</p> <p>2 some handwriting on top of the Bates stamp.</p> <p>3 It's the page that looks just like the page we</p> <p>4 were looking at with some handwritten additions.</p> <p>5 Do you have a recollection of what</p> <p>6 these handwritten additions meant?</p> <p>7 MR. FARR: I'm sorry. What page are</p> <p>8 you on?</p> <p>9 MS. MACKIE: DEF 34.</p> <p>10 THE WITNESS: I don't -- I'm not sure I</p> <p>11 can read it very easily either. The writing is</p> <p>12 small.</p> <p>13 My recollection is that there was some</p> <p>14 discussion by the Democrat representative from</p> <p>15 Wake county when they asked for some</p> <p>16 clarification as to when the -- when it could</p> <p>17 have started as far as payment is concerned, and</p> <p>18 it's the best I can remember as to what this</p> <p>19 did, but it arose from a question from</p> <p>20 Representative Darren -- and I can't remember</p> <p>21 his last name.</p> <p>22 BY MS. MACKIE:</p> <p>23 Q. Jackson?</p> <p>24 A. Jackson. Thank you.</p> <p>25 Q. So did this amendment just clarify that any</p> <p>127</p>
<p>1 Q. And you never saw any invoices?</p> <p>2 A. Not that I remember.</p> <p>3 Q. Why not?</p> <p>4 A. Why not?</p> <p>5 Q. Yes.</p> <p>6 A. I didn't hire him. It was done through the</p> <p>7 legal firm. So I wouldn't be the one to do that</p> <p>8 directly.</p> <p>9 Q. Who paid Dr. Hofeller?</p> <p>10 A. I'm assuming it was done through the legal firm.</p> <p>11 Q. Where did the money come from to pay --</p> <p>12 A. I assume that's when they billed the General</p> <p>13 Assembly. So I don't remember seeing any bills</p> <p>14 that Dr. Hofeller submitted.</p> <p>15 Q. Public funds were used to pay Dr. Hofeller,</p> <p>16 right?</p> <p>17 A. As part of our legal expenses in defending a</p> <p>18 case.</p> <p>19 Q. Do you know how many hours Dr. Hofeller worked?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Did you have any written communications with</p> <p>22 Hofeller about his fees?</p> <p>23 A. Not that I remember.</p> <p>24 Q. Do you know what his hourly rate was?</p> <p>25 A. No, ma'am.</p> <p>126</p>	<p>1 experts engaged to draw maps could be paid for</p> <p>2 work completed prior to February 16, 2016?</p> <p>3 A. I'm assuming that's what it says, yes. It</p> <p>4 helped clarify the language on it because he</p> <p>5 raised that question.</p> <p>6 Q. If you will look at the next two pages, DEF 35</p> <p>7 and 36, did these pages reflect the vote on the</p> <p>8 payment motion?</p> <p>9 A. It appears that both of them passed, bipartisan</p> <p>10 support.</p> <p>11 Q. And if you will look at Page DEF 37 and there's</p> <p>12 other handwritten additions to that page, if</p> <p>13 you'll read through those and tell me what those</p> <p>14 mean.</p> <p>15 A. Yeah. I'm not sure I can read them very well.</p> <p>16 I would probably say to you there was some</p> <p>17 additional clarification, but I can't make heads</p> <p>18 or tails out of this.</p> <p>19 Q. Let me try to help you out.</p> <p>20 A. Go ahead.</p> <p>21 Q. In Paragraph 2, the addition says:</p> <p>22 "The co-chairs shall control</p> <p>23 legislative confidentiality of any</p> <p>24 drafting request or maps produced..."</p> <p>25 And I think you move up:</p> <p>128</p>

<p>1 "...from this authority unless and</p> <p>2 until presented to the committee in the</p> <p>3 co-chair's discretion."</p> <p>4 A. I don't recollect what specifically this issue</p> <p>5 was addressing. I just don't remember that.</p> <p>6 Q. Is it your understanding that you were able to</p> <p>7 control legislative confidentiality of drafting</p> <p>8 requests for maps produced?</p> <p>9 A. I can't remember exactly what this specific</p> <p>10 amendment dealt with.</p> <p>11 Q. Do you remember if you supported it or not?</p> <p>12 A. I did.</p> <p>13 Q. And are you looking at Page DEF 38?</p> <p>14 A. Yes.</p> <p>15 Q. Is that the vote on this amendment?</p> <p>16 A. It appears to be.</p> <p>17 Q. Okay. Senator, if you'll look at Page 135 of</p> <p>18 the transcript, and I want to ask you about</p> <p>19 Senator Blue's question that begins on Line 11</p> <p>20 and your response to that.</p> <p>21 What did you mean when you said "I</p> <p>22 think we're probably going to use the one that</p> <p>23 you're presently using now"?</p> <p>24 A. I was responding to Senator Blue, and my</p> <p>25 understanding was that we would be using at that</p> <p style="text-align: right;">129</p>	<p>1 Q. Certainly.</p> <p>2 A. Yes. Apparently a map was being presented to</p> <p>3 the committee. We -- as chairman I asked if</p> <p>4 there were any additional maps that would like</p> <p>5 to be submitted with the hope that we would get</p> <p>6 the minority party to engage in the process.</p> <p>7 They were aware, as we were, as of February 5th</p> <p>8 that maps would need to be redrawn or now maps</p> <p>9 would need to be redrawn. So we would have</p> <p>10 hoped that they would have recognized that and</p> <p>11 prepared maps to move forward with.</p> <p>12 Q. When the Joint Committee met the day before, on</p> <p>13 February 16th, did you tell the committee that a</p> <p>14 map would be presented the following day?</p> <p>15 A. I -- let me see if I said anything in the back</p> <p>16 end of this as to when the next committee</p> <p>17 meeting would be.</p> <p>18 I don't remember.</p> <p>19 Q. Okay.</p> <p>20 A. Apparently there was a notice put out for the</p> <p>21 next committee meeting and it was scheduled for</p> <p>22 whatever time that was. I don't have that here.</p> <p>23 Q. Did you tell members of the minority party that</p> <p>24 they should submit a map by February 17th?</p> <p>25 A. We -- and I can't remember how that was done. I</p> <p style="text-align: right;">131</p>
<p>1 point to do map drawing Dr. Hofeller.</p> <p>2 Q. So did you think that Senator Blue was also</p> <p>3 going to be using Dr. Hofeller?</p> <p>4 A. I don't know if he was really looking for</p> <p>5 assistance from us as who to hire to draw the</p> <p>6 maps. I think he was just trying to identify</p> <p>7 Dr. Hofeller as a map drawer that we would use.</p> <p>8 Q. Okay. At this point you had already started</p> <p>9 working with Dr. Hofeller?</p> <p>10 A. Yes.</p> <p>11 Q. And he had already drawn maps?</p> <p>12 A. He was working on the process.</p> <p>13 Q. Okay. If you'll turn to Tab 2 in this notebook.</p> <p>14 And what is this transcript?</p> <p>15 A. It looks like the second meeting of the Joint</p> <p>16 Committee on Redistricting.</p> <p>17 Q. Did you present a map at this meeting?</p> <p>18 A. I think I mentioned that in there, so I'm trying</p> <p>19 to remember. I don't remember exactly the</p> <p>20 sequence of the time, but --</p> <p>21 Q. I may be able to refresh your recollection.</p> <p>22 If you'll turn to Page 8 and there's a</p> <p>23 statement by you. Does that refresh your</p> <p>24 recollection whether you presented a map --</p> <p>25 A. Let me read it, if I may.</p> <p style="text-align: right;">130</p>	<p>1 know we clarified the language as to the 25,000.</p> <p>2 I know following the same procedure we did when</p> <p>3 I spoke with Senator McKissick and Senator Blue</p> <p>4 when we did the 2011 map that we would have</p> <p>5 hoped them to participate in a similar manner.</p> <p>6 Resources were provided to help them achieve and</p> <p>7 submit their version of the map.</p> <p>8 I can only speak to the Senate side.</p> <p>9 Representative Lewis could explain to you</p> <p>10 exactly what he may have done to speak to the</p> <p>11 House members.</p> <p>12 Q. When did you receive the map from Dr. Hofeller</p> <p>13 that you presented at this committee hearing?</p> <p>14 A. I don't remember exactly when Dr. Hofeller had</p> <p>15 the map inputted onto the legislative computer.</p> <p>16 I don't know the answer to that question.</p> <p>17 Q. Would it have been sometime between the</p> <p>18 committee meeting on February 16th and this</p> <p>19 committee meeting on the 17th?</p> <p>20 A. I don't know the answer to that. I don't know</p> <p>21 when it was inputted on there.</p> <p>22 Q. If you will turn to Tab 3. Actually, I'm sorry,</p> <p>23 Tab 6.</p> <p>24 A. Six.</p> <p>25 Q. I'm sorry, let's actually go back to that Joint</p> <p style="text-align: right;">132</p>

<p>1 Committee meeting on February 17th. You may not 2 have to go back to the transcript. 3 Was the map approved by the committee 4 that day? 5 A. For the Joint Committee, I would assume yes. 6 No, I don't know. I don't remember. 7 Q. Okay. Let's go back just to get that straight 8 for the record. 9 A. That is what, Tab 2? 10 Q. That is Tab 2. And if you'll turn to Page 72. 11 A. 72? 12 Q. Yes. 13 A. The -- the maps were -- there was a motion for 14 adoption of the maps and there was a vote -- 15 role call vote to adopt the maps, and we were -- 16 I think that was the 18th. Am I not correct? 17 What was the date of that one? 18 Q. The date is at the very top of the page. 19 A. 17th. Okay. That was Wednesday the 17th that 20 that was done, and we needed to have everything 21 completed by the 19th. So time was of the 22 essence for us to comply with the Harris court, 23 and this was the next step before it went into 24 Senate and House redistricting committees. 25 Q. So the map that you presented to the Joint</p> <p style="text-align: right;">133</p>	<p>1 Q. Yes, is the start. It says "Senator Rucho" and 2 it's the start of your statement that continues 3 on to Page 8. 4 A. The Senate Redistricting Committee was taking up 5 the map and Representative Lewis was presenting 6 that map to the Senate Redistricting Committee. 7 Q. Okay. Thank you. 8 On Lines 4 through 6 -- 9 A. Of page? 10 Q. Of Page 8 you say: 11 "And any amendments that come 12 forward have to include the entire state 13 map." 14 Why was that? 15 A. It is usually redistricting process where if you 16 make adjustments on one district, it has a 17 rippling effect on others. And so if you don't 18 have a map in its entirety, it's impossible to 19 be sure that what change was made in not 20 achieving any of the eight criteria would have 21 been impacted. So it was important for that 22 full map to be your amendment. 23 Q. When you say "any amendments," do you mean 24 alternative maps? 25 A. Alternate maps, change in the maps, someone says</p> <p style="text-align: right;">135</p>
<p>1 Committee on February 17th was approved by the 2 Joint Committee on February 17th? 3 A. Actually, Representative Lewis presented that 4 map. 5 Q. Okay. Thank you for that correction. 6 The map that Representative Lewis 7 presented to the Joint Committee on 8 February 17th was approved by the Joint 9 Committee on that same day? 10 A. On the 17th. 11 Q. And was the vote 24 in favor and 11 against? 12 And it may help to look at Page 72, Lines 12 13 through 6. 14 A. 24 and 11, that's accurate. 15 Q. Was that based on party lines? 16 A. Yes. 17 Q. Now we can go back to Tab 6. 18 Is this a transcript of the Senate 19 Redistricting Committee on February 18th? 20 A. Yes. 21 Q. If you will turn to Page 8. 22 A. Okay. Page 8. 23 Q. And the bottom of Page 6 shows that you were the 24 speaker. 25 A. The bottom of Page 6.</p> <p style="text-align: right;">134</p>	<p>1 I want to change the number in District 4, 2 that's the kind of thing that would need to be 3 done. 4 Q. So you're saying if someone wants to make a 5 change to District 4, they need to present a map 6 of the entire -- 7 A. Reflecting that change and how it impacts the 8 entire map. 9 Q. Okay. Why did you redraw the entire 10 congressional plan? 11 MR. FARR: Objection to form. 12 THE WITNESS: Well, that goes back to 13 what we originally were charged in doing. If 14 you remember, we had to -- under advice of the 15 Harris court, they weren't happy with the 12th 16 district. So when you consolidated that, you 17 impacted all of the counties that were involved 18 in that part. 19 So that in itself was, you know, one 20 major portion, and that goes to the ripple 21 effect. Once you change one district, you 22 change many, and if you changed the 12th, which 23 crisscrossed many of the counties, then it 24 requires you to make major changes everywhere. 25 BY MS. MACKIE:</p> <p style="text-align: right;">136</p>

<p>1 Q. Did you have any discussions about only changing 2 Congressional Districts 1 and 12 and the 3 districts close to those districts? 4 A. It's not possible to do that because once you 5 change one and trying to meet all the criteria 6 that has been established, you can't just try to 7 make those changes and conform to the criteria 8 that we established which we believed was 9 critical for the Harris court to accept and to 10 approve our maps. 11 Q. So you had to change the entire map? 12 A. In essence, to achieve what the Harris court 13 would have expected for us, at least that's what 14 we interpreted the Harris court needed us to do. 15 Q. If you'll turn to Page 10, and on Lines 13 to 16 15, Representative Lewis says: 17 "But make no mistake in that regard, 18 this is a weaker map than the enacted 19 plan." 20 What is meant by that? 21 A. I mentioned earlier to you that in drawing these 22 maps following these criteria that were 23 established to conform with what the Harris 24 Court wanted us to do, I mentioned earlier that 25 Representative Lewis in describing the maps that</p> <p style="text-align: right;">137</p>	<p>1 justify that claim and Representative Lewis 2 responds. 3 A. May I read it? 4 Q. Please. 5 A. My best estimate of what was done is that 6 Senator Ford wanted to get some clarification as 7 to how Representative Lewis had made the 8 statement that he did about weaker maps, and I 9 think Representative Lewis did not have the 10 material in front of him but said you look at 11 the stat packs, you can look at every district 12 and determine if there was changes in what was 13 the 2011 stat pack versus the 2016 stat pack. 14 Q. Did you look at the stat pack to make that 15 comparison? 16 A. No. 17 Q. So again, you don't know whether the 2016 map is 18 weaker? 19 A. My responsibility was -- and the responsibility 20 of Representative Lewis was to get the map to 21 comply with all of the criteria, harmonize them 22 and get it passed and on to the Harris Court 23 before the end of the 19th. So that's what we 24 were in the process of doing. 25 Q. If you will turn to Page 22. And at the bottom,</p> <p style="text-align: right;">139</p>
<p>1 they were less -- let's just say it was not as 2 easy for Republicans to win that seat or to 3 Democrats, for that matter, but it changed -- it 4 weakened any type of partisan changes that might 5 have been there or political. 6 Q. How did you determine that? 7 A. That is a statement that probably needs to be 8 answered by Representative Lewis, to be honest 9 with you. 10 Q. But you agreed with his statement, right? 11 A. I believe -- I agreed with his premise. 12 Q. Did you have a way to determine that the 2016 13 map was weaker than the 2011 map? 14 A. I'm not familiar with one. 15 Q. Okay. So you don't actually know whether it was 16 weaker? 17 A. I went on his statement, and I had no reason to 18 doubt it. 19 Q. If you will turn to Pages 12 and 13. And I'll 20 let you read this. 21 A. Okay. 22 Q. My question is going to be about Senator Ford's 23 questions which are similar to the questions I 24 was just asking you. 25 On Page 12 you asked about the data to</p> <p style="text-align: right;">138</p>	<p>1 Senator McKissick asked if you can identify any 2 consultants or persons that provided assistance 3 in drawing these districts, and if you will read 4 your response. 5 A. Yes. I said that it wasn't relevant and 6 therefore unnecessary to say. 7 Q. Why was that not relevant? 8 A. It wasn't relevant because, in essence, the 9 criteria were established. The orders -- the 10 rule -- the guidelines were there, and whether 11 Dr. Hofeller or anybody else was doing that, in 12 this case it was Dr. Hofeller, as you know, it 13 wasn't relevant to this map moving forward. 14 Q. You didn't think that your fellow senators 15 deserved to know who drew the maps? 16 MR. FARR: Objection to the form. 17 THE WITNESS: No. 18 BY MS. MACKIE: 19 Q. And if you will turn to the next page, Page 24, 20 your statement at the top says: 21 "I'll be clear, the criteria that 22 Representative Lewis has submitted is 23 the criteria that was used to draw the 24 maps, and probably that's as much as we 25 need to know."</p> <p style="text-align: right;">140</p>

<p>1 A. The maps were based on the criteria. What else 2 needs to be known? 3 Q. If you'll turn to Page 28 and you'll see at the 4 bottom of Page 27 that -- this is you speaking. 5 You say: 6 "...when the criteria were 7 established, we wanted to be clear what 8 each of the goals -- stated goals were, 9 and, therefore, we needed to be sure 10 that whatever they were we understood 11 them to be. 12 "And then any time that a future 13 legislator or a future court needed to 14 know that we know specifically what we 15 were trying to achieve." 16 Was your purpose in having written 17 criteria so that a future court would know what 18 your goals were? 19 A. The -- it goes back to the original when we drew 20 2011. We had criteria when we were drawing 21 those maps. 22 Redistricting is very complex and you 23 need a recipe or you need a roadmap as to draw 24 them and to draw any of the maps, and this was 25 our roadmap to accomplish that because we felt</p> <p style="text-align: right;">141</p>	<p>1 (WHEREUPON, Plaintiffs' Exhibit 36 was 2 marked for identification.) 3 THE WITNESS: Are we finished with this 4 book? 5 MS. MACKIE: I think so. 6 BY MS. MACKIE: 7 Q. Senator Rucho, does Exhibit 36 have transcripts 8 of the Senate floor sessions on February 18th 9 and February 19th? 10 A. Yes. 11 Q. And was Senate Bill 2 introduced on the floor of 12 the Senate in the February 18th session, which 13 is behind Tab 1. And to help you out, you may 14 want to look at Page 25. 15 A. Yes. 16 Q. And if you will turn to Page 107. And you may 17 want to look at Page 104 to see who the speaker 18 is. 19 A. I assume you're alluding to Senator Berger. 20 Q. Yes. 21 A. Okay. 22 Q. Had Senator Berger seen the map before 23 February 18, 2016? 24 MR. FARR: Remember my instructions to 25 you.</p> <p style="text-align: right;">143</p>
<p>1 that those criteria, harmonized together, would 2 meet the requirements by the Harris case. 3 So we clearly state that whether it's 4 the court or legislators or anybody else, this 5 is how we arrived at the map, the 2016 6 contingent map, which, again, we didn't feel was 7 necessary because we were still confident that 8 the 2011 map would remain -- would be found to 9 be constitutional, but we were meeting the 10 requirements of the court at the time this was 11 done. And all we had now was another day left 12 before we had to complete it so we were running 13 out of time. 14 Q. And to that end, if you will turn to Page 63. 15 A. 60? 16 Q. 63, yes. Did the map pass the Senate 17 Redistricting Committee on February 18th? 18 A. Yes. 19 Q. And was it by a vote of 12 to 5? 20 A. That's correct. 21 Q. Was that based on party lines? 22 A. Likely. 23 Q. I'm going to hand you what we will mark as 24 Exhibit 36. 25 ///</p> <p style="text-align: right;">142</p>	<p>1 THE WITNESS: Yes. Yes, I understand. 2 I believe the map was online on the 3 redistricting website. I'm sure this would have 4 been the third meeting that we would have had 5 with members of the Senate both in the Joint 6 Conference Committee on Redistricting, Senate 7 Redistricting and now on the floor. I think I 8 even mentioned the fact that there were at least 9 40 members that have been present one way or the 10 other in this. 11 So my best guess is that at some point 12 Senator Berger had seen the map. 13 BY MS. MACKIE: 14 Q. And if you will turn to -- well, did Senate 15 Bill 2 pass the Senate on February 18th? 16 A. Yes. 17 Q. Page 110, the vote reflected there. 18 A. Yes. 19 Q. And was it 32 in favor and 15 opposed? 20 A. That is correct. 21 Q. And was that on party lines? 22 A. I don't have the breakdown before me, but I'll 23 assume yes. 24 MS. MACKIE: We've been going for 25 almost an hour and a half. Do you want to take</p> <p style="text-align: right;">144</p>

<p>1 a break?</p> <p>2 MR. FARR: Okay.</p> <p>3 MS. MACKIE: We'll do just a quick</p> <p>4 break.</p> <p>5 MR. FARR: Sure. Thank you.</p> <p>6 THE VIDEOGRAPHER: Off record at 2:25</p> <p>7 p.m.</p> <p>8 (Brief Recess.)</p> <p>9 THE VIDEOGRAPHER: On record at</p> <p>10 2:40 p.m.</p> <p>11 BY MS. MACKIE:</p> <p>12 Q. Senator, if you could look at Tab 2 in</p> <p>13 Exhibit 36, which is the Senate floor session on</p> <p>14 February 19th.</p> <p>15 Was a bill introduced at this session</p> <p>16 that's related to the logistics of a new</p> <p>17 congressional election in 2016?</p> <p>18 A. Let me just be clear that the one we talked</p> <p>19 about in the morning was Senate Bill 2. This</p> <p>20 was House Bill 2. Actually, it came over from</p> <p>21 the House.</p> <p>22 They had originated the bill dealing</p> <p>23 with setting up the -- I think it was a June</p> <p>24 primary election for congressional races that</p> <p>25 would run under the map that we have</p> <p style="text-align: right;">145</p>	<p>1 does?</p> <p>2 MR. STRACH: Objection. We're not</p> <p>3 going to testify -- I'm going to instruct him</p> <p>4 not to testify on any matters outside of</p> <p>5 congressional redistricting.</p> <p>6 MS. MACKIE: Okay.</p> <p>7 MR. STRACH: He's not waived his</p> <p>8 legislative immunity as to anything but</p> <p>9 congressional redistricting as Mr. Farr said</p> <p>10 earlier.</p> <p>11 BY MS. MACKIE:</p> <p>12 Q. So you're maintaining legislative privilege and</p> <p>13 immunity with regard to Senate Bill 4?</p> <p>14 A. Yes.</p> <p>15 Q. I am going to hand you what was marked yesterday</p> <p>16 as Exhibit 16A. And I do have extra copies of</p> <p>17 that.</p> <p>18 Have you seen this document before,</p> <p>19 Senator Rucho?</p> <p>20 A. I don't recall it. I know it was discussed</p> <p>21 yesterday, but I don't recall seeing it or</p> <p>22 reading it.</p> <p>23 Q. Okay. I'm going to ask you about one specific</p> <p>24 paragraph in it. If you'll turn to Page 23 and</p> <p>25 it's Paragraph 68.</p> <p style="text-align: right;">147</p>
<p>1 submitted -- had submitted to the Harris court.</p> <p>2 So yes.</p> <p>3 Q. And did House Bill 2 pass the Senate on</p> <p>4 February 19th? Page 3 may answer that question</p> <p>5 for you.</p> <p>6 A. Yes.</p> <p>7 Q. Actually, Page 14 is the third reading.</p> <p>8 A. Right. Bipartisan support.</p> <p>9 Q. Thank you. You can put that notebook away.</p> <p>10 I'm going to hand you what we will mark</p> <p>11 as Exhibit 37.</p> <p>12 (WHEREUPON, Plaintiffs' Exhibit 37 was</p> <p>13 marked for identification.)</p> <p>14 BY MS. MACKIE:</p> <p>15 Q. Senator Rucho, can you tell me what Exhibit 37</p> <p>16 is?</p> <p>17 A. It appears to be Senate Bill 4, Creation of</p> <p>18 Bipartisan State Board of Elections and Ethics</p> <p>19 Enforcement.</p> <p>20 Q. And were you a sponsor of this bill?</p> <p>21 A. I can't remember if I sponsored it or I ran it</p> <p>22 on the floor or what, but I was -- I was part of</p> <p>23 the effort to pass it during one of the special</p> <p>24 sessions.</p> <p>25 Q. And what is your understanding of what this bill</p> <p style="text-align: right;">146</p>	<p>1 Have you read Paragraph 68?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Do you agree with Dr. Hofeller that the General</p> <p>4 Assembly's overarching goal in 2011 was to</p> <p>5 create as many safe and competitive districts</p> <p>6 for Republican incumbents or potential</p> <p>7 candidates as possible?</p> <p>8 MR. STRACH: Objection.</p> <p>9 You can answer that.</p> <p>10 THE WITNESS: I would probably say our</p> <p>11 overarching goal was to pass the redistricting</p> <p>12 maps and to get preclearance from the Justice</p> <p>13 Department so that an election can take place in</p> <p>14 2012 on the normal schedule.</p> <p>15 And, no, I don't agree with the premise</p> <p>16 that they were the overarching goal as described</p> <p>17 by Dr. Hofeller.</p> <p>18 BY MS. MACKIE:</p> <p>19 Q. Okay. If you will flip back to Paragraph 23,</p> <p>20 the first line says:</p> <p>21 "Political control of the</p> <p>22 redistricting process can also become an</p> <p>23 overarching factor."</p> <p>24 Would you agree with that statement?</p> <p>25 A. I'd like to read it.</p> <p style="text-align: right;">148</p>

<p>1 Q. Sure. I'm only asking about that first sentence 2 in Paragraph 23. 3 MR. STRACH: Read the whole paragraph 4 for context. 5 THE WITNESS: I'm not sure I concur 6 with his premise primarily because of the fact 7 that in 2010 the Republicans running on 8 Democratically-drawn gerrymandered maps, we 9 ended up winning the majority. And so I'm not 10 sure that -- you know, if based on what he 11 described it was contradicted by the results of 12 the 2010 election. 13 BY MS. MACKIE: 14 Q. Okay. So you disagree that political control of 15 the redistricting process can also become an 16 overarching factor? 17 MR. STRACH: Objection. 18 You can answer that. 19 THE WITNESS: I'm not sure I 20 understand. Overarching factor for what? For? 21 BY MS. MACKIE: 22 Q. Would you agree that political control can be a 23 factor that takes precedence over other factors 24 in redistricting? 25 MR. STRACH: Objection.</p> <p style="text-align: right;">149</p>	<p>1 to help many states gain the majority in the -- 2 for the Republicans in a number of states across 3 the country. 4 I actually -- if I'm not mistaken, I 5 think I went to one RSLC meeting and probably 6 walked away disappointed because I think they 7 had a series of tiers that they -- they thought 8 would be winning opportunities for them and 9 North Carolina didn't even make into the top 10 four tiers. So I said that's disappointing, 11 because, you know, everyone thinks that they can 12 win the majority. 13 I know of them, but that's probably the 14 extent of what I do know. 15 Q. When did you go to an RSLC meeting? 16 A. My recollection it was either in Raleigh or in 17 Charlotte. It was back in 2010 or earlier. And 18 they came around explaining what they were 19 doing. And I'm sure as a legislator I was 20 invited to attend probably to learn more than -- 21 I learned something that I never had known 22 before. 23 Q. And that was the only RSLC meeting you had went 24 to? 25 A. Best I can remember.</p> <p style="text-align: right;">151</p>
<p>1 THE WITNESS: I don't mean to be 2 difficult. Are we talking political control 3 like controlling the legislative House and 4 Senate? Is that what we're describing? 5 BY MS. MACKIE: 6 Q. Sure. We can agree on that definition for 7 political control. 8 A. When we were running in 2010, it wasn't for the 9 purpose of -- it was the purpose of changing the 10 direction of the government, not necessarily -- 11 the state government, not for any other reason. 12 So I'm not sure -- I'm not sure I believe in 13 that premise. 14 Q. Okay. Thank you. 15 Are you familiar with the Republican 16 State Leadership Committee? 17 A. RSLC? 18 Q. Yes. 19 A. I think it was discussed at length yesterday. 20 Q. Had you heard of the RSLC before yesterday? 21 A. I did. 22 Q. How did you hear of it? 23 A. I think back in 2010 or somewhere in that period 24 of time when -- and I'm going on memory -- there 25 was the -- the RSLC was in the process of trying</p> <p style="text-align: right;">150</p>	<p>1 Q. I want to hand you what was marked yesterday as 2 Exhibit 9. 3 MS. MACKIE: And, Phil, I'm sorry, I do 4 not have extra copies of this one. 5 THE WITNESS: Dear legislator letter. 6 MR. STRACH: All right. 7 BY MS. MACKIE: 8 Q. Did you receive a copy of this letter? 9 A. I don't remember. 10 Q. Have you seen this letter before? 11 A. I think this was something that was discussed 12 yesterday, but nothing that I've seen -- nothing 13 prior than what was discussed yesterday. 14 Q. So did you receive it? 15 A. I don't believe I had. 16 Q. And do you remember seeing it before yesterday? 17 A. No. 18 Q. I'm going to hand you what we will mark as 19 Exhibit 38. 20 (WHEREUPON, Plaintiffs' Exhibit 38 was 21 marked for identification.) 22 THE WITNESS: Yes, I've read it. 23 BY MS. MACKIE: 24 Q. Have you seen this document before? 25 A. I don't believe I received the letter. I</p> <p style="text-align: right;">152</p>

<p>1 believe this is the meeting that I attended. It</p> <p>2 was in Charlotte. And at that time the Chairman</p> <p>3 Hayes had invited us to attend, and it was</p> <p>4 during the period of time in 2010 that Senator</p> <p>5 Berger, Speaker Tillis and myself attempted to</p> <p>6 increase the number of our seats in the House</p> <p>7 and the Senate, and that was when we ran under</p> <p>8 the Democrat gerrymandered maps.</p> <p>9 Q. Who is Robin Hayes?</p> <p>10 A. Robin Hayes is the chairman -- was the chairman</p> <p>11 at that time of the North Carolina GOP.</p> <p>12 Q. And you said that you think that this may have</p> <p>13 been the RSLC meeting that you attended?</p> <p>14 A. My recollection is yes.</p> <p>15 Q. So it would have been --</p> <p>16 A. I know it's in Charlotte, and I remember that</p> <p>17 Robin Hayes was -- probably led the -- or</p> <p>18 introduced him as he was probably hosting it.</p> <p>19 Q. And would that meeting have been June 23, 2010?</p> <p>20 A. I don't know. I don't remember.</p> <p>21 Q. Do you think it was in 2010 when you went to the</p> <p>22 RSLC meeting?</p> <p>23 A. My guess is, especially with my name there, I</p> <p>24 must have been invited to it. As a legislator,</p> <p>25 I'm sure I was invited, and if it was in the</p> <p style="text-align: right;">153</p>	<p>1 meeting to learn more," et cetera, et cetera,</p> <p>2 "in a state update from Thom, Phil and Bob."</p> <p>3 A. I don't remember back in 2010 if I spoke at this</p> <p>4 meeting or not. I can't -- I can't imagine I</p> <p>5 would have, but if it would have been, it would</p> <p>6 have been Speaker Tillis and Senator Berger, not</p> <p>7 likely me.</p> <p>8 Q. Okay. So you don't remember providing a state</p> <p>9 update at this meeting?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Are you familiar with the State Government</p> <p>12 Leadership Foundation?</p> <p>13 A. I don't think so. The name doesn't -- the</p> <p>14 acronym in the name doesn't ring a bell.</p> <p>15 Q. Okay. You have not heard of the SGLF?</p> <p>16 A. No.</p> <p>17 Q. In 2011 were you -- were you aware of</p> <p>18 Dr. Hofeller's role with the RSLC?</p> <p>19 A. I met Dr. Hofeller back in 2000. At the time we</p> <p>20 were in the minority, and I wasn't on the</p> <p>21 redistricting committee, but I did meet</p> <p>22 Dr. Hofeller at that time, but I don't think --</p> <p>23 I didn't know who he worked for, to be honest</p> <p>24 with you. It might have been the RNC or</p> <p>25 somebody, but I can't specifically tell you that</p> <p style="text-align: right;">155</p>
<p>1 Charlotte area I probably attended it.</p> <p>2 Q. My question was was it in 2010.</p> <p>3 A. As best I can tell.</p> <p>4 Q. And if you look in the first paragraph, he</p> <p>5 writes that -- he's writing about the impact</p> <p>6 they will have on the upcoming 2011</p> <p>7 redistricting process.</p> <p>8 Does that refresh your recollection</p> <p>9 about when this meeting might have taken place?</p> <p>10 A. Where do you see that part? Okay, I got it. In</p> <p>11 the last line of the first paragraph.</p> <p>12 Q. Yes.</p> <p>13 A. Well, I guess at that point if indeed the</p> <p>14 Republicans could have won the election in 2010,</p> <p>15 they would have had a say in the redistricting</p> <p>16 process.</p> <p>17 Q. Did you provide a state update at this meeting?</p> <p>18 A. I doubt it because I had nothing to update them</p> <p>19 on. I was just a senator working for a</p> <p>20 majority, and so I'm not sure what I would have</p> <p>21 talked to them about. As a matter of fact, I'm</p> <p>22 sure this was their meeting. They wouldn't have</p> <p>23 wanted me to speak there.</p> <p>24 Q. Well, if you look at the last paragraph, it says</p> <p>25 "I would like to invite you to a breakfast</p> <p style="text-align: right;">154</p>	<p>1 I knew what -- who he was employed by.</p> <p>2 Q. And when you hired him in 2011 to draw maps for</p> <p>3 North Carolina in 2011, were you aware of his</p> <p>4 role with the RSLC?</p> <p>5 A. I don't know if I was familiar with that. I</p> <p>6 know that he was very knowledgeable about that,</p> <p>7 and in 2011 our goal was to get the maps</p> <p>8 approved by the Justice Department, pre-cleared</p> <p>9 and then have it ready for 2012. So I was</p> <p>10 hopefully counting on if he had expertise to</p> <p>11 help us achieve that goal.</p> <p>12 Q. But you did not know that he also was working</p> <p>13 for the RSLC?</p> <p>14 A. I don't believe I was, no.</p> <p>15 MS. MACKIE: Thank you, Senator. I</p> <p>16 don't have any other questions for you.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MS. MACKIE: But you're not done yet.</p> <p>19 THE WITNESS: I thought I was ready to</p> <p>20 go home and take my power nap.</p> <p>21 EXAMINATION</p> <p>22 BY MS. RIGGS:</p> <p>23 Q. Thank you for your patience, Senator Berger --</p> <p>24 or, Senator Rucho. Sorry.</p> <p>25 A. No problem.</p> <p style="text-align: right;">156</p>

<p>1 Q. As I mentioned, my name is Allison Riggs, and I</p> <p>2 represent the League of Women Voters in a</p> <p>3 separate case brought second in these quasi</p> <p>4 consolidated actions.</p> <p>5 I'm not going to repeat questions that</p> <p>6 Ms. Mackie asked. There's a couple of places</p> <p>7 where I felt like I need a little clarification</p> <p>8 and a few places where I want to go into a</p> <p>9 little bit more detail, but I will be as brief</p> <p>10 as possible.</p> <p>11 I want to go back to the conversation</p> <p>12 you had with Ms. Mackie earlier this morning</p> <p>13 when you were reviewing your deposition notice</p> <p>14 and talking about your search for calendar</p> <p>15 items, calendar meetings, that discussion.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you use Outlook on your legislative</p> <p>19 computer to schedule your meetings?</p> <p>20 A. I really don't know how the legislative computer</p> <p>21 worked. That was -- staff people did that, so I</p> <p>22 don't know if it was Outlook or not. I don't --</p> <p>23 Q. So you don't know if there was any link -- let</p> <p>24 me strike that.</p> <p>25 Do you use Outlook on your iPhone to</p> <p style="text-align: right;">157</p>	<p>1 A. If it helped me be there, of course, I would try</p> <p>2 to do that.</p> <p>3 Q. Same thing with if you were meeting with</p> <p>4 Dr. Hofeller, a few days in advance you would</p> <p>5 mark it on your calendar so you wouldn't forget?</p> <p>6 A. Best guess.</p> <p>7 Q. Okay. Do you know what the policy at the</p> <p>8 legislature with respect to archiving e-mails</p> <p>9 and calendar items?</p> <p>10 A. No.</p> <p>11 Q. Do you know what the practice is at the</p> <p>12 legislature with respect to deleting e-mails or</p> <p>13 calendar items?</p> <p>14 A. No.</p> <p>15 Q. Is it your personal practice ever to delete</p> <p>16 e-mails?</p> <p>17 A. If it's on my personal computer or my personal</p> <p>18 iPhone I would assume, especially when I keep</p> <p>19 getting messages that I have too many messages</p> <p>20 on there, it says you have to delete something</p> <p>21 to get some more. So that's probably how I</p> <p>22 would respond to that.</p> <p>23 Q. Do you receive e-mails at your legislative</p> <p>24 e-mail account on your personal iPhone?</p> <p>25 A. Not anymore.</p> <p style="text-align: right;">159</p>
<p>1 schedule meetings?</p> <p>2 A. I know it works. I don't know how it works.</p> <p>3 Q. So you don't know if there was any link between</p> <p>4 your iPhone and your calendar or computer in</p> <p>5 your legislative office?</p> <p>6 A. There may be. I don't know.</p> <p>7 Q. Well, one way to get at that is did your</p> <p>8 legislative assistant ever schedule a meeting</p> <p>9 for you and then it would pop up on your iPhone?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Fair to say that for most meetings that</p> <p>12 you would have you would have a calendar item</p> <p>13 for that?</p> <p>14 A. I mean, there are -- you know, being in the</p> <p>15 legislative building, you could be walking down</p> <p>16 the corridor and someone would say "Come in here</p> <p>17 a minute," so it wouldn't be something</p> <p>18 scheduled.</p> <p>19 I can't say whether it would or</p> <p>20 wouldn't. Of course, you have constituents, you</p> <p>21 set your calendar and work like that, but</p> <p>22 sometimes yes, sometimes no.</p> <p>23 Q. Okay. Standard, though, if you were going to</p> <p>24 meet with your lawyers, you would mark it on</p> <p>25 your calendar so you wouldn't forget?</p> <p style="text-align: right;">158</p>	<p>1 Q. Did you when you were in the Senate?</p> <p>2 A. I think I might have, best I can guess.</p> <p>3 Q. And so your same rule would apply, you would</p> <p>4 delete those if you had a memory issue on your</p> <p>5 phone?</p> <p>6 A. Yes.</p> <p>7 Q. What about on your legislative computer, when</p> <p>8 you were in the legislature, was it your</p> <p>9 practice to delete e-mails?</p> <p>10 A. I never used the e-mail -- I mean, I never used</p> <p>11 computer in the legislative building. It was</p> <p>12 always handled by -- I never used it so...</p> <p>13 Q. At the very end when you were talking with</p> <p>14 Ms. Mackie you mentioned that you had met</p> <p>15 Dr. Hofeller first in 2000; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. In what setting did you first meet him?</p> <p>18 A. I think at the time that I met him he was</p> <p>19 working with Senator Ballantine who was the</p> <p>20 minority leader on redistricting.</p> <p>21 Q. So you met him in the context of doing</p> <p>22 redistricting in North Carolina after the 2000</p> <p>23 census?</p> <p>24 A. Yes, with the caveat that I was not on the</p> <p>25 redistricting committee. So if it was, it</p> <p style="text-align: right;">160</p>

<p>1 was -- it was related to redistricting, but</p> <p>2 that's the extent of it. I didn't get involved</p> <p>3 with map drawing or anything of that sort.</p> <p>4 Q. But you did vote on the 2001 Congressional</p> <p>5 Redistricting Plan?</p> <p>6 A. I can't remember if I voted yes or no, but,</p> <p>7 yeah, I probably voted, and again in 2003</p> <p>8 because that covered the period of time that I</p> <p>9 was there.</p> <p>10 Q. Okay. And did you talk to Dr. Hofeller in 2001</p> <p>11 and 2003?</p> <p>12 A. I remember in 2000. I can't recollect any</p> <p>13 other.</p> <p>14 Q. Was that your first introduction to</p> <p>15 redistricting in 2001?</p> <p>16 A. Yes, because of the fact that I had not been in</p> <p>17 the General Assembly, '97, so that would have</p> <p>18 been the first period of time that we would have</p> <p>19 been involved with redistricting.</p> <p>20 Q. And understanding that you weren't on the</p> <p>21 redistricting committee, did you still take --</p> <p>22 take the opportunity to look at all of the</p> <p>23 materials made available --</p> <p>24 A. No.</p> <p>25 Q. -- to you?</p> <p style="text-align: right;">161</p>	<p>1 A. That's a good question. I would say to you that</p> <p>2 if -- bizarre looking maps.</p> <p>3 Q. Okay. So when you use the word gerrymander,</p> <p>4 you're not being specific --</p> <p>5 A. Can I clarify.</p> <p>6 Q. Yep.</p> <p>7 A. Bizarre looking maps -- now that I understand it</p> <p>8 a lot better -- that don't follow the</p> <p>9 redistricting criteria, traditional criteria.</p> <p>10 Q. Is that true for both a partisan gerrymander and</p> <p>11 a racial gerrymander?</p> <p>12 MR. STRACH: Objection.</p> <p>13 You can answer that if you can.</p> <p>14 THE WITNESS: I don't have a judgment</p> <p>15 on that part.</p> <p>16 BY MS. RIGGS:</p> <p>17 Q. Okay. Well, what do you -- you're familiar with</p> <p>18 the term "partisan gerrymander" or "political</p> <p>19 gerrymander," right? You've heard it?</p> <p>20 A. Yes.</p> <p>21 Q. What would you understand that to mean?</p> <p>22 A. A political gerrymandering would -- basically to</p> <p>23 give advantage probably to one or another of the</p> <p>24 parties that were drawing it.</p> <p>25 Q. And what do you understand a racial gerrymander</p> <p style="text-align: right;">163</p>
<p>1 A. Well, only when the map came out. There wasn't</p> <p>2 any other time that I would spend. Other people</p> <p>3 were involved in that, the other people on the</p> <p>4 committee.</p> <p>5 Q. I understand, but when it came to the Senate</p> <p>6 floor and you were asked to vote on it one way</p> <p>7 or the other, did you look at the stat packs</p> <p>8 associated with the 2001 plan?</p> <p>9 A. I would assume before I voted on it I would have</p> <p>10 looked at it. Would I have understood it or</p> <p>11 whatever, the complications of it, that's</p> <p>12 another question, but, you know, if I'm going to</p> <p>13 vote on a bill I'm going to at least look at it.</p> <p>14 Q. So I understood you to tell Ms. Mackie that you</p> <p>15 had -- that you were referring to the 2001 plan</p> <p>16 as a Democrat gerrymander.</p> <p>17 Did I correctly understand what you</p> <p>18 told her?</p> <p>19 A. I believe that, yes. And the 2003 plan too.</p> <p>20 Q. So you thought both were Democratic political</p> <p>21 gerrymanders?</p> <p>22 A. No. They were gerrymanders because they didn't</p> <p>23 follow the law.</p> <p>24 Q. Okay. Well, how about you define for me the</p> <p>25 word "gerrymander" in your mind.</p> <p style="text-align: right;">162</p>	<p>1 to be?</p> <p>2 MR. STRACH: Objection.</p> <p>3 Again, you can answer this if you can.</p> <p>4 THE WITNESS: After experiencing the</p> <p>5 Harris court, I surely recognize what it's not,</p> <p>6 but the -- the -- I guess it would be the fact</p> <p>7 that either race was used predominantly or there</p> <p>8 are -- well, there used to be -- probably not so</p> <p>9 much now after Shelby -- Section 5 violations</p> <p>10 with retrogression and things like that.</p> <p>11 BY MS. RIGGS:</p> <p>12 Q. So when you use the term gerrymander, you might</p> <p>13 use it in a way that's separate and apart from</p> <p>14 either a partisan gerrymander or racial</p> <p>15 gerrymander?</p> <p>16 MR. STRACH: Objection.</p> <p>17 Answer if you can.</p> <p>18 THE WITNESS: Repeat the question.</p> <p>19 BY MS. RIGGS:</p> <p>20 Q. So what I'm getting at is you said the 2001 and</p> <p>21 2003 were Democrat gerrymanders, and what I want</p> <p>22 to understand is does that mean you're talking</p> <p>23 about gerrymandering separate and apart from</p> <p>24 partisan gerrymandering and racial</p> <p>25 gerrymandering?</p> <p style="text-align: right;">164</p>

<p>1 A. I would probably define it at the level of 2 saying that they did not follow the 3 redistricting principles and part of that was 4 exposed in the 2003 redistricting redraw by the 5 courts. 6 So I would probably just say that 7 simplistically that, you know, they just didn't 8 follow the law when they were drawing the maps 9 and the legal precedence that came with it 10 following the Constitution. That's the level 11 that I would probably put it at. 12 Q. So do you think the 2001 and 2003 plans, to use 13 your words, gave advantage to Democrats over 14 Republicans? 15 A. I would say that the Democrats, by not following 16 the law, did take advantage of the system. 17 Q. Okay. And do you know -- do you remember what 18 the composition of the congressional delegation 19 was in 2002 and 2004? 20 A. No. 21 Q. Would it surprise you if it was 7-6 Republican 22 control in both congressional sessions? 23 A. I don't know. 24 Q. But it wouldn't surprise you? 25 A. I don't know.</p> <p style="text-align: right;">165</p>	<p>1 about is I'm still a little fuzzy on some of 2 this timeline stuff, so bear with me, and I just 3 want to pin some stuff down as best we can 4 without having any calendar items. 5 First, I want to talk about from the 6 Harris trial to February 5th when the court 7 ruled in 2016. You and Dr. Hofeller were both 8 at the Harris trial in Greensboro, correct? 9 A. I was at the Harris trial in Greensboro and I 10 believe Dr. Hofeller was also. 11 Q. And until February 5, 2016, did you have any 12 opportunities to meet with or talk with 13 Dr. Hofeller? 14 A. You mean like on redistricting stuff? 15 Q. Yes. 16 A. Not that I can recollect. 17 Q. So October, November, December, January, first 18 five days of February, no discussions with 19 Dr. Hofeller on redistricting? 20 A. I was supposed to be a potential witness in that 21 case, and I can't remember -- I don't remember 22 if Dr. Hofeller was there when I was preparing 23 to potentially be a witness there. So I just 24 don't remember if he was in the room when I was 25 there.</p> <p style="text-align: right;">167</p>
<p>1 Q. And you would -- if that were true, would that 2 change your opinion that Democrats created an 3 advantage for themselves in the 2001 and 2003 4 redistricting process? 5 MR. STRACH: Objection. 6 You can answer. 7 THE WITNESS: Clarification, if I may. 8 Are we talking about legislative or 9 congressional maps? 10 BY MS. RIGGS: 11 Q. Only congressional. Only congressional. 12 So if it's true that Republicans had 13 7-6 majorities in both the 2002 and 2004 14 congressional delegations based on the 2001 and 15 2003 redistrictings, if that's true, does that 16 change your opinion that the 2001 and 2003 plans 17 gave Democrats an advantage over Republicans? 18 MR. STRACH: Objection. 19 You can answer if you're comfortable 20 speculating about the truth of the facts. 21 THE WITNESS: I really don't know if 22 I've got an answer to it because I don't 23 remember all that went on at that point. 24 BY MS. RIGGS: 25 Q. All right. Next thing I want to talk to you</p> <p style="text-align: right;">166</p>	<p>1 Q. Okay. And to be clear, I'm asking after that. 2 From the end of the Harris trial when 3 you were at least in the same room with him in 4 the courtroom -- 5 A. Yes. 6 Q. -- to February 5, 2016, did you have any 7 opportunity to talk to Dr. Hofeller in person or 8 on the phone about redistricting? 9 A. I don't remember that. 10 Q. And then -- so you certainly during that 11 timeframe didn't retain him to do anything? 12 A. I think I spoke with Ms. Mackie and I said I 13 didn't anticipate losing that case so there 14 would have been no reason to retain him. 15 Q. So 5:00 p.m. on February 5th when you find out 16 about the Harris ruling -- 17 A. Closer to 6:00. 18 Q. You didn't speak with Dr. Hofeller that evening, 19 correct? 20 A. No, ma'am. 21 Q. And you can't remember if he was on the call on 22 February 6th? 23 A. I don't remember that. 24 Q. You don't remember if he was on the call or not? 25 A. That's correct. I remember being on the call.</p> <p style="text-align: right;">168</p>

<p>1 I'm pretty sure it was on the day after.</p> <p>2 Q. The evening of February 5th, did it immediately</p> <p>3 occur to you that you would have Dr. Hofeller</p> <p>4 help out again?</p> <p>5 A. I didn't know exactly what was required of us by</p> <p>6 the ruling so I probably waited until we had</p> <p>7 some feedback.</p> <p>8 Q. By the evening of that Saturday, February 6th,</p> <p>9 at that point in your mind were you sure</p> <p>10 Dr. Hofeller was going to help you?</p> <p>11 A. I can't be sure of that. I mean, it wouldn't</p> <p>12 have been my decision alone. It would have been</p> <p>13 Representative Lewis and myself to make that</p> <p>14 decision.</p> <p>15 Q. Okay.</p> <p>16 A. So once we recognized that it was needing to be</p> <p>17 done, of course there may have been a need to</p> <p>18 bring Dr. Hofeller if he was available to do</p> <p>19 that, but I can't say to you Saturday night that</p> <p>20 I said yes.</p> <p>21 Q. But you met with Dr. Hofeller on Monday or</p> <p>22 Tuesday, right?</p> <p>23 A. That's correct.</p> <p>24 Q. So when did that meeting get set up?</p> <p>25 A. Probably on Monday or so, whenever I came back.</p> <p style="text-align: right;">169</p>	<p>1 afternoon to continue the meeting. He had an</p> <p>2 appointment that he had already scheduled. So I</p> <p>3 can't remember if it's that day or the day</p> <p>4 afterwards, but -- because he had a doctor's</p> <p>5 appointment that he had scheduled.</p> <p>6 Q. So you may have actually met with him twice on</p> <p>7 whatever day that first day is?</p> <p>8 A. Continuation.</p> <p>9 Q. Okay. So you would have gone to his house, left</p> <p>10 and then gone back to his house?</p> <p>11 A. The best I can remember.</p> <p>12 Q. So after that continuation of the first meeting,</p> <p>13 when was the next meeting that you had with</p> <p>14 Dr. Hofeller?</p> <p>15 A. I don't recall.</p> <p>16 Q. How many times did you meet with Dr. Hofeller</p> <p>17 between the first meeting and the enactment of</p> <p>18 the 2016 contingent plan?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you talk to him every day during that</p> <p>21 12-day --</p> <p>22 A. I don't recall.</p> <p>23 Q. Well, I want to narrow it -- sometimes narrowing</p> <p>24 it down may jog your memory, but bear with me.</p> <p>25 I'm going to ask you some detailed questions.</p> <p style="text-align: right;">171</p>
<p>1 I can't remember what day I got back in to</p> <p>2 Raleigh, and it would have been set up probably</p> <p>3 last minute. We were in the 14-day crunch time</p> <p>4 which was already two days or three days gone,</p> <p>5 so...</p> <p>6 Q. So you didn't have any conversation with</p> <p>7 Dr. Hofeller on Sunday, February 7th?</p> <p>8 A. I don't believe so.</p> <p>9 Q. Did you have any conversations with Dr. Hofeller</p> <p>10 before you met with him in person at his house</p> <p>11 on the 8th or 9th?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay. So you go to his house on the 8th or 9th,</p> <p>14 and this is your first time with Dr. Hofeller</p> <p>15 since the Harris trial, first time talking about</p> <p>16 redistricting, right?</p> <p>17 A. As best I can recollect.</p> <p>18 Q. Okay. I want to ask you a few more questions</p> <p>19 about what y'all discussed at that meeting, but</p> <p>20 first I want to finish my timeline.</p> <p>21 After you left that meeting, when was</p> <p>22 the next time that you talked to Dr. Hofeller?</p> <p>23 A. I think there were -- I think he had an</p> <p>24 appointment that day, and I think -- I can't</p> <p>25 remember. I think we came back in the later</p> <p style="text-align: right;">170</p>	<p>1 If you don't recall, you can say that.</p> <p>2 Did you meet with Dr. Hofeller in</p> <p>3 person again after that first meeting?</p> <p>4 A. I don't recall as far as meeting again.</p> <p>5 Q. Did Dr. Hofeller ever come down to the</p> <p>6 legislative office or legislative building, I</p> <p>7 guess I should say?</p> <p>8 A. I'm sure he did when he inputted the maps.</p> <p>9 Q. Okay.</p> <p>10 A. And I can't remember if I saw him that day or</p> <p>11 not, but I'm not sure why -- even then if I was</p> <p>12 supposed to.</p> <p>13 Q. Was it ever the case that you would see his next</p> <p>14 versions of the maps where he wouldn't be the</p> <p>15 deliverer? I mean, would he give them to</p> <p>16 Representative Lewis and Representative Lewis</p> <p>17 would give them to you? Did that ever happen?</p> <p>18 A. You know, at one point Representative Lewis and</p> <p>19 I found the map that achieved the criteria that</p> <p>20 was required of us to get the Harris court to go</p> <p>21 along with it, and that meant specifically the</p> <p>22 best map that had the least amount of counties</p> <p>23 that were split and VTDs that were split. And</p> <p>24 at one point at his home -- and I just don't</p> <p>25 remember what day -- Representative Lewis and I</p> <p style="text-align: right;">172</p>

<p>1 agreed that this was the map that we would go 2 with.</p> <p>3 Q. So that couldn't have been the initial meeting, 4 right?</p> <p>5 A. No. There might have been a subsequent one, but 6 I can't -- it could have been a subsequent one.</p> <p>7 Q. So if you did in fact approve of the final map 8 at Hofeller's home, there was at least another 9 in-person meeting at his home?</p> <p>10 A. As best I can recollect.</p> <p>11 Q. Okay. I think when we talk about some of these 12 draft maps, it might jog your memory a little 13 bit on that front, but where I was actually 14 trying to get to was how did Dr. Hofeller give 15 you draft maps? Hand them to you in person? 16 E-mailing them to you?</p> <p>17 A. No. We would have been there and it was either 18 on the screen or something that he was able to 19 print out.</p> <p>20 Q. So if you viewed a draft map, it was only in the 21 presence of Dr. Hofeller?</p> <p>22 A. I would say yes.</p> <p>23 Q. Okay. Do you remember the dates when you and 24 Representative Lewis finally said this is the 25 map that does it?</p> <p style="text-align: right;">173</p>	<p>1 about it. I wasn't even aware of it until we 2 had to amend the map. So I'm not even sure what 3 period of time that was.</p> <p>4 Q. Okay. Do you remember how you found out about 5 that error?</p> <p>6 A. When I found out that we had an amendment to 7 bring forth, amended version of it and we needed 8 to have that in -- I can't even remember which 9 committee it was in, but I think it was one of 10 our redistricting committees, if I'm not 11 mistaken, the best I can remember.</p> <p>12 Q. Let me make sure I understand. So you only 13 learned about that error when someone brought 14 forth an amended version?</p> <p>15 A. When staff folks gave me an amended version. I 16 was probably chairing the committee at that 17 time. It wasn't anything earth-shattering.</p> <p>18 Q. Right.</p> <p>19 A. So therefore it wouldn't have been something I 20 would have to know about immediately. It was 21 just a corrective change.</p> <p>22 Q. How did you notify Dr. Hofeller that you needed 23 to make that change?</p> <p>24 A. I don't know if I did it or staff did it or what 25 it was. I don't remember exactly.</p> <p style="text-align: right;">175</p>
<p>1 A. I can't give you the exact date. I don't 2 remember.</p> <p>3 Q. So what if we link it to the Joint Committee 4 meeting on the 17th when the map was presented. 5 On the 17th is when it was presented, I'm pretty 6 sure. Was it that day or a few days in advance 7 of that meeting?</p> <p>8 A. It was prior to -- it was prior to the time that 9 he came down to the legislative building to 10 input the map on the state computer, so whenever 11 that was.</p> <p>12 Q. You don't remember when he came to do that?</p> <p>13 A. I don't.</p> <p>14 Q. Generally would staff need like 24 hours 15 after --</p> <p>16 A. I don't even know how it's done.</p> <p>17 Q. Okay. Did your interactions with Dr. Hofeller 18 stop once you had decided this is the map?</p> <p>19 A. The only thing I believe was necessary was that 20 when we had to make the modification due to the 21 fact that the wrong address for congressman from 22 Greensboro, I believe, we had the wrong address 23 there and I think he made a modification on the 24 map and subsequently we amended it, but -- and I 25 can't remember if I or -- I think I found out</p> <p style="text-align: right;">174</p>	<p>1 Q. Were staff free to communicate with Dr. Hofeller 2 without you being an intermediary?</p> <p>3 A. I just don't remember how it was done when it 4 was identified. It was -- I just can't remember 5 if someone else gave -- just said "fix that 6 problem." Again, it was not an issue to be 7 concerned about because it was an error in the 8 address and that's all it was.</p> <p>9 Q. Sure. And I wasn't actually speaking about with 10 respect to that change. I mean globally were 11 staff authorized to directly provide 12 Dr. Hofeller with what he asked for or in any 13 other way directly communicate with 14 Dr. Hofeller?</p> <p>15 A. No. It would be something either from 16 Representative Lewis or myself on something that 17 was critical.</p> <p>18 Q. So fair to say -- going back to this first 19 meeting on the 8th or the 9th, fair to say based 20 on this timeline that we've constructed that 21 Hofeller didn't have any instructions from you 22 prior to your first meeting with him?</p> <p>23 A. There -- Representative Lewis and I would have 24 shared our initial vision of what we needed to 25 do subsequent to our Saturday meeting. And</p> <p style="text-align: right;">176</p>

<p>1 there's a lot of preliminary work that needs to 2 be done by Dr. Hofeller and I'm sure -- I don't 3 know how much map drawing you've done. I know 4 there's a lot of preliminary work that needs to 5 be done to get ready for implementing the 6 changes. 7 So repeat your question one more time. 8 Q. So I understand when you and Representative 9 Lewis sat down with Dr. Hofeller on the 8th or 10 the 9th for the first time you shared with him 11 your version. My question is: Before sitting 12 down with him at his home, you didn't give him 13 any input? 14 A. I did not. 15 Q. And you had talked with Caroline about the maps 16 that Dr. Hofeller had already, the sort of 17 general sketches when you came in to meet with 18 him on the 8th or the 9th. 19 Do you remember that? 20 A. It was just some of the data that was on the 21 board. I don't believe it had anything other 22 than some traditional redistricting criteria 23 that would have normally been there, like the 24 zero deviation and as far as that goes and 25 things like that, which is -- some of it's</p> <p style="text-align: right;">177</p>	<p>1 was an hour or two hours. I can't remember. 2 Q. It was in that range? 3 A. Yeah, somewhere. 4 Q. It wasn't a ten-hour meeting? 5 A. No. 6 Q. How did the meeting go? What was the first 7 thing that you talked about when you sat down? 8 A. Representative Lewis and I discussed with him 9 some of the thoughts that we had that needed to 10 be included in this. Talked about some of the 11 original or traditional redistricting 12 requirements. And at that point we had come to 13 the conclusion the 12th district would be 14 consolidated, letting him know that that would 15 be done. Basically outlined, without the final 16 draft, the redistricting criteria that we 17 established. 18 Q. Okay. 19 A. That was instructions to him. 20 Q. All oral? 21 A. Absolutely. 22 Q. Did he ask questions about any of the criteria? 23 A. He's a very knowledgeable man. He understood 24 pretty much what we were describing. 25 Q. Okay. So after you and Representative Lewis go</p> <p style="text-align: right;">179</p>
<p>1 included in that criteria, but -- 2 Q. But he didn't have that yet? 3 A. That's correct. I mean, but that's something 4 that he knew would have been in there anyhow. 5 It's just normally done when you draw maps, 6 redistricting maps. 7 Q. And I recall what you told her was one of those 8 criteria he was trying to keep counties whole. 9 A. Well, the criteria is listed here. We've 10 already discussed it today, all eight of this 11 especially. 12 Q. But he didn't have that yet? 13 A. I -- well, that was always something we tried to 14 do whenever we could. The only time we ever did 15 it differently is if we were required to 16 accommodate the Voting Rights Act, which when we 17 redrew this map we were clearly told there was 18 no racially polarized voting and therefore there 19 was no need for use of race and then that kind 20 of gives us some clear direction. 21 Q. So when you sat down with Dr. Hofeller on the 22 8th or 9th, factoring in the fact that you had 23 to leave for his appointment, about how long did 24 that first meeting last? 25 A. I have no way of being able to say whether it</p> <p style="text-align: right;">178</p>	<p>1 through and establish the criteria, what happens 2 next in the meeting? 3 A. I would probably say to you that was probably a 4 time that Dr. Hofeller needed to go to his 5 appointment. 6 Q. Okay. 7 A. And sometime I think -- and I'm guessing, I'm 8 trying to remember. Sometime later on that 9 afternoon we returned after his appointment and 10 to continue the discussion and fall in line with 11 some of the things that he was needing to do. 12 And, of course, when he did his work, I'm sure 13 we were gone. 14 Q. So when you came back after his appointment, 15 were you still discussing the criteria or you 16 had moved on to other topics? 17 A. Well, if the criteria is what we used to draw 18 the maps, then either we reiterated them or -- 19 but they were laid out for him to know what 20 needed to be done so that we could harmonize 21 them together and get it approved by the Harris 22 court. 23 Q. At what point did he tell you he had already had 24 some draft maps done? 25 A. I don't recall that -- you know, that being</p> <p style="text-align: right;">180</p>

<p>1 said. I can't even tell you if they were</p> <p>2 preliminarily or -- call them what you want,</p> <p>3 there are a number of iterations you have to go</p> <p>4 through. I'm not even sure what you call a</p> <p>5 draft map when it might not have included all</p> <p>6 the criteria that he needed to harmonize so that</p> <p>7 he could get a map that would be worth looking</p> <p>8 at.</p> <p>9 Q. Well, I understand for sure he wouldn't have had</p> <p>10 time to deal with the criteria in that, but you</p> <p>11 said he had some draft maps already.</p> <p>12 A. There were some maps on the board. Whether you</p> <p>13 call them draft maps or not, you know, those are</p> <p>14 the preliminary use of the traditional</p> <p>15 redistricting that you would be using.</p> <p>16 Q. Okay. So he's got a big poster board? What did</p> <p>17 it say on the board?</p> <p>18 A. On the screen.</p> <p>19 Q. On his computer?</p> <p>20 A. Yes.</p> <p>21 Q. So he showed you some maps on his computer?</p> <p>22 A. Just how some of the things were breaking out,</p> <p>23 testing, you know, what parts you put together,</p> <p>24 what parts you don't.</p> <p>25 Q. Do you remember approximately how many maps he</p> <p style="text-align: right;">181</p>	<p>1 Q. Okay.</p> <p>2 A. That would have allowed those districts to be</p> <p>3 competitive.</p> <p>4 Q. So when Dr. Hofeller showed you that first map,</p> <p>5 did you ask him "Is this a 10-3 map"?</p> <p>6 A. I didn't ask that.</p> <p>7 Q. Did you ask him what the political implications</p> <p>8 were of his preliminary work?</p> <p>9 A. I'm not even sure at that level of early review</p> <p>10 that you can even be doing that because you</p> <p>11 really don't have the districts lined up and,</p> <p>12 more importantly, you don't have the criteria</p> <p>13 that are in place.</p> <p>14 Q. So was one of your questions at that first</p> <p>15 meeting with Dr. Hofeller "Let us know if 10-3</p> <p>16 is possible"?</p> <p>17 A. We asked him to put a map up and tell us -- you</p> <p>18 know, try to put all these together to harmonize</p> <p>19 them and let's see what is doable. We had no</p> <p>20 clue if it was 10-3 or 9-4, whatever. You know,</p> <p>21 this was a brand new map based on criteria that</p> <p>22 did not include race.</p> <p>23 Q. But you had already walking in there knew that</p> <p>24 you wanted to ask him to look for a 10-3 map?</p> <p>25 A. It was a request that we had, could it be done.</p> <p style="text-align: right;">183</p>
<p>1 showed you that day?</p> <p>2 A. I remember one, so...</p> <p>3 Q. Could it have been more than one?</p> <p>4 A. I don't remember.</p> <p>5 Q. When he was showing you that map, did he also</p> <p>6 show you any -- it probably would have looked</p> <p>7 differently, but any political data, like a stat</p> <p>8 pack?</p> <p>9 A. No.</p> <p>10 Q. And what did he tell you about that one map</p> <p>11 about how -- I think you said how things were</p> <p>12 breaking out. How did he -- what did he tell</p> <p>13 you about that map?</p> <p>14 A. There wasn't much to say because it was so</p> <p>15 preliminary. He needed time to implement the</p> <p>16 guidelines that we established with the criteria</p> <p>17 that he needed to implement it.</p> <p>18 Q. When you were giving Dr. Hofeller the criteria</p> <p>19 at that meeting, I think you phrased it earlier</p> <p>20 in your discussion with Ms. Mackie that you were</p> <p>21 wanting to do 10-3 if it were possible; is that</p> <p>22 correct?</p> <p>23 A. We -- we believed that to be similar to what the</p> <p>24 other maps were that was if it was possible we</p> <p>25 would have liked to have done that.</p> <p style="text-align: right;">182</p>	<p>1 Who knew until you actually have a map.</p> <p>2 Q. Did you ask him to look for an 11-2 map?</p> <p>3 A. At that point being so early on where there</p> <p>4 wasn't really, you know, all the implementation,</p> <p>5 I don't even believe that's a legitimate</p> <p>6 question. So I'm saying you don't ask for 11-2.</p> <p>7 It wasn't even on the board. The districts</p> <p>8 weren't even identified. So I'm not even sure</p> <p>9 that would be a question that I would ask.</p> <p>10 Q. Well, wouldn't the same be true for a 10-3?</p> <p>11 A. No, because the 10-3 was there because of the</p> <p>12 fact that it was consistent with what the</p> <p>13 enacted map was.</p> <p>14 Q. Right, but you're starting from scratch then,</p> <p>15 right?</p> <p>16 A. Starting from scratch and saying this is</p> <p>17 something we'd like to see. We didn't say can</p> <p>18 it be done.</p> <p>19 Q. Well, why didn't you say "We'd like to see an</p> <p>20 11-2 map"?</p> <p>21 A. We would like to see a 10-3; show us what you</p> <p>22 can or can't do with it following the criteria</p> <p>23 that we established.</p> <p>24 Q. I'm still not understanding, though, why you</p> <p>25 didn't want to see the whole range of</p> <p style="text-align: right;">184</p>

<p>1 possibilities.</p> <p>2 A. We needed to see something to begin with and</p> <p>3 then be able to modify it if it needed to be</p> <p>4 modified, but you need a starting point.</p> <p>5 Q. Did you leave Dr. Hofeller's home with any</p> <p>6 papers in hand?</p> <p>7 A. I don't remember that being -- no.</p> <p>8 Q. Do you remember if the preliminary map that he</p> <p>9 showed you on his computer screen that day had a</p> <p>10 name associated with it?</p> <p>11 A. No.</p> <p>12 Q. I want to hand to you what was previously marked</p> <p>13 as Exhibit 31 yesterday.</p> <p>14 A. This is the final map, am I correct, the enacted</p> <p>15 map?</p> <p>16 Q. No. So I'll represent to you yesterday -- my</p> <p>17 understanding is these were draft maps that</p> <p>18 Dr. Hofeller produced to plaintiffs in this</p> <p>19 case. Based on an eyeball contingency looks</p> <p>20 pretty similar to the enacted map, but this is</p> <p>21 how we got them and there's a whole bunch of</p> <p>22 them.</p> <p>23 And if you skim through them, the</p> <p>24 nomenclature is at the bottom left so you can</p> <p>25 see what it's named. There's a series that are</p> <p style="text-align: right;">185</p>	<p>1 district was different.</p> <p>2 The best I can remember is the first</p> <p>3 time there was just the preliminary map and then</p> <p>4 I think I remember two other maps that I</p> <p>5 remember looking at that I paid any attention</p> <p>6 to.</p> <p>7 Q. Was one of those the map that you ultimately</p> <p>8 approved?</p> <p>9 A. Yes.</p> <p>10 Q. So there was only one map that you rejected?</p> <p>11 A. I think we came -- I came down to the two that I</p> <p>12 felt -- and I speak for -- Representative Lewis</p> <p>13 can speak for himself -- that met the criteria</p> <p>14 that we were trying to do, including a map that</p> <p>15 reduced or split the least amount of counties</p> <p>16 and the least amount of VTDs along with</p> <p>17 harmonizing the rest of the criteria that were</p> <p>18 established. That's how I came -- personally</p> <p>19 made a decision on it.</p> <p>20 Q. So if you reviewed one of Dr. Hofeller's draft</p> <p>21 maps, it was only at his house on his computer,</p> <p>22 correct?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And based on our conversation, we think there</p> <p>25 was only -- maybe only one trip to</p> <p style="text-align: right;">187</p>
<p>1 called Congressional 2016 Contingent and then</p> <p>2 Contingent B, Contingent C, and then there's a</p> <p>3 series that are labeled Congress 16, dash, a</p> <p>4 letter, then there are some that are labeled</p> <p>5 Congress 19, dash, a letter, and there's a bunch</p> <p>6 of them.</p> <p>7 Take your time to look through them,</p> <p>8 but I'm actually going to ask a few questions</p> <p>9 before we get into the details with those</p> <p>10 You've had a chance to look through</p> <p>11 those?</p> <p>12 A. Yep, best I could.</p> <p>13 Q. So after the first meeting February 8th or 9th</p> <p>14 until when you and Representative Lewis settled</p> <p>15 on a final map before the tweak, the correction</p> <p>16 of the address of the incumbent in Greensboro,</p> <p>17 how many drafts did Dr. Hofeller show you?</p> <p>18 A. I think I remember the original time was not --</p> <p>19 I don't think you -- well, you can just look. I</p> <p>20 think yesterday was mentioned they started from</p> <p>21 reverse as to what he started. There were a lot</p> <p>22 of iterations as to how he was trying to</p> <p>23 configure this. And so I think it was -- it's</p> <p>24 reversed because there were a lot more different</p> <p>25 changes, different counties together in the 4th</p> <p style="text-align: right;">186</p>	<p>1 Dr. Hofeller's after the initial meeting?</p> <p>2 A. I believe that's correct, yes.</p> <p>3 Q. At that meeting would you have been presented</p> <p>4 with those two draft maps that you saw?</p> <p>5 A. Yes. I would say yes.</p> <p>6 Q. So he explained to you about each of them and</p> <p>7 then you made a decision?</p> <p>8 A. As to how close we were to conforming with the</p> <p>9 criteria that had been established in</p> <p>10 harmonizing them.</p> <p>11 Q. And just clarifying what you said with respect</p> <p>12 to Exhibit 31 before, you said he went in</p> <p>13 reverse. Did you --</p> <p>14 A. No. That's what y'all said yesterday when it</p> <p>15 was presented.</p> <p>16 Q. Okay. I wasn't here yesterday.</p> <p>17 Is it your understanding that the maps</p> <p>18 toward the back of the packet were earlier</p> <p>19 versions?</p> <p>20 A. That's what was said yesterday. I can't speak</p> <p>21 to it. I was just listening.</p> <p>22 Q. Just your understanding?</p> <p>23 A. And I didn't see the maps yesterday.</p> <p>24 Q. There's obviously a lot more than two maps in</p> <p>25 this pack. So is it fair to say that you hadn't</p> <p style="text-align: right;">188</p>

<p>1 seen before today most of the maps in this</p> <p>2 packet?</p> <p>3 A. I'd probably say yes.</p> <p>4 Q. Tell me about the map that you rejected.</p> <p>5 A. I don't remember exactly how it was except that</p> <p>6 it did have more split counties and more split</p> <p>7 VTDs, and to me that was something that was</p> <p>8 considered seriously by the court, and if indeed</p> <p>9 they followed the criteria that we established</p> <p>10 as we harmonized them together and the map that</p> <p>11 would have given least amount, which is pretty</p> <p>12 much the one that we enacted or that we voted</p> <p>13 on, passed, came down to 13 county splits and 12</p> <p>14 VTD splits.</p> <p>15 Q. Do you remember -- the plan that you rejected,</p> <p>16 do you remember how many more counties were</p> <p>17 split?</p> <p>18 A. No. I was just told it was higher. I don't</p> <p>19 remember.</p> <p>20 Q. Dr. Hofeller didn't tell you the exact number?</p> <p>21 A. I don't remember.</p> <p>22 Q. Did he provide you stat packs for those maps</p> <p>23 when you considered them?</p> <p>24 A. I don't think so. I think the stat packs would</p> <p>25 have had to come from the General Assembly</p> <p style="text-align: right;">189</p>	<p>1 Q. I wanted to know -- so like what you were</p> <p>2 saying, I want to know -- I want to know did he</p> <p>3 tell you how it complied with the incumbency</p> <p>4 criteria?</p> <p>5 A. Incumbency, thank you. Under that situation, I</p> <p>6 knew we were struggling in what was the 4th</p> <p>7 district because of the close proximity</p> <p>8 between District 4 and District 2, which would</p> <p>9 have been Elmer's and Price and Holding. So I</p> <p>10 knew there was a problem in that area.</p> <p>11 Everything else was okay. I knew Elma</p> <p>12 Adams had her own district in the northern part</p> <p>13 because everything had been consolidated down</p> <p>14 into Mecklenburg for the 12th. So everyone else</p> <p>15 seemed to be in a position of --</p> <p>16 Q. So when you had that second meeting at</p> <p>17 Dr. Hofeller's when he presented you with the</p> <p>18 two, did you have your criteria list and you're</p> <p>19 sort of checking to make sure that everything</p> <p>20 was satisfied on both plans?</p> <p>21 A. Mentally that is what we did.</p> <p>22 Q. Okay. Excellent.</p> <p>23 Were both plans that were presented to</p> <p>24 you equally populated within that one person?</p> <p>25 A. One-person, one-vote?</p> <p style="text-align: right;">191</p>
<p>1 computer.</p> <p>2 Q. Right. Fair enough. As we call them stat</p> <p>3 packs, they're produced by the General Assembly.</p> <p>4 Did he provide you any statistical data</p> <p>5 on the two maps he was presenting you with?</p> <p>6 A. I think the only part that I could remember</p> <p>7 clearly was the split counties and the split</p> <p>8 VTDs, which was important.</p> <p>9 Q. So you don't remember whether it was one more</p> <p>10 county or five more counties?</p> <p>11 A. Correct.</p> <p>12 Q. Same question for VTDs, do you remember</p> <p>13 approximately how many more VTDs?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay. Did he tell you what the effect was on</p> <p>16 incumbent -- incumbent protection in both plans</p> <p>17 that he presented to you?</p> <p>18 A. Definitely not the first day.</p> <p>19 Q. Right. Right.</p> <p>20 A. Subsequent days I'm sure we asked at that point</p> <p>21 to see exactly how -- in trying to conform</p> <p>22 completely with what we presented as far as the</p> <p>23 redistricting criteria that we established.</p> <p>24 Repeat your question one more time,</p> <p>25 please.</p> <p style="text-align: right;">190</p>	<p>1 Q. Well, yes. I think there's an odd number of</p> <p>2 people in the state of North Carolina so you</p> <p>3 couldn't --</p> <p>4 A. There would have been one of them that would</p> <p>5 have been there, but off the computer -- and I</p> <p>6 think, I don't know very much about Maptitude</p> <p>7 other than it gives some very nice pictures, but</p> <p>8 I'm sure that when he told us he zeroed them out</p> <p>9 it would have been as close to, again, meeting</p> <p>10 the criteria on equal population.</p> <p>11 Q. Okay. So you didn't reject the plan that you</p> <p>12 rejected because it didn't satisfy the equal</p> <p>13 population criteria?</p> <p>14 A. The maps that he presented got as close to that</p> <p>15 as we could and that's what needed to be done</p> <p>16 for us to get approval, which we did get from</p> <p>17 the Harris court.</p> <p>18 Q. And then the second criteria, contiguity, did</p> <p>19 both plans that he presented you at that second</p> <p>20 meeting satisfy the contiguity criteria?</p> <p>21 A. As best I can guess.</p> <p>22 Q. I'm going to skip down to the 12th district.</p> <p>23 Did both plans consolidate, as you</p> <p>24 described, the 12th district in Mecklenburg</p> <p>25 county?</p> <p style="text-align: right;">192</p>

<p>1 A. I believe that is correct.</p> <p>2 Q. And we discussed incumbency. Do you recall that</p> <p>3 both plans had the same --</p> <p>4 A. I don't remember the incumbency issue as to</p> <p>5 whether one was different than the other. I</p> <p>6 remember the one that we ended up choosing had</p> <p>7 the one problem with incumbency that wasn't able</p> <p>8 to be addressed, not without making an unusual</p> <p>9 shape.</p> <p>10 Q. Okay. And then what about partisan advantage,</p> <p>11 were both plans in your mind 10-3 plans?</p> <p>12 A. I don't -- I don't remember that. You know, I</p> <p>13 know the one that was 10-3 was selected. I</p> <p>14 can't remember if indeed the other one was.</p> <p>15 Now, you know, recognizing when it's</p> <p>16 10-3, it doesn't mean 10 Republicans are going</p> <p>17 to win that time and again. I think if you look</p> <p>18 at Roy Cooper's elections within there, I think</p> <p>19 you'll find that Roy Cooper won many of them.</p> <p>20 So if the right candidate is in place,</p> <p>21 any candidate can win that thing. So, you know,</p> <p>22 to say that it would be 10 Republicans is not</p> <p>23 necessarily so.</p> <p>24 Q. The plan that you ended up going with that day,</p> <p>25 the one of the two, were you satisfied that your</p> <p style="text-align: right;">193</p>	<p>1 needed or wanted. I'm trying to blend them all</p> <p>2 together to make sure that the map that we were</p> <p>3 able to select, which we ended up doing and we</p> <p>4 ultimately got presented and the election met</p> <p>5 all of the criteria.</p> <p>6 So to pick out one and say this one</p> <p>7 achieved it, you know, it might have been less,</p> <p>8 it might have been more, but it all achieved it</p> <p>9 to some level.</p> <p>10 Q. But keeping counties whole and keeping VTDs</p> <p>11 whole was a factor you were considering in</p> <p>12 deciding whether this was a compact plan or not?</p> <p>13 A. It was critical for me because of the fact that</p> <p>14 the court had raised serious questions about it</p> <p>15 and that was something we wanted to have</p> <p>16 addressed.</p> <p>17 Q. Did Dr. Hofeller explain why the plan that you</p> <p>18 rejected had more split counties and VTDs?</p> <p>19 A. I don't remember the explanation.</p> <p>20 Q. Flipping -- so I want to turn back to</p> <p>21 Exhibit 31.</p> <p>22 Based on the names of any of these</p> <p>23 maps, do any of these seem to be the plan that</p> <p>24 you rejected?</p> <p>25 A. I don't remember the names nor -- when I</p> <p style="text-align: right;">195</p>
<p>1 partisan advantage criteria was satisfied?</p> <p>2 A. I am saying to you that the partisan advantage</p> <p>3 was every bit as important as every other</p> <p>4 criteria in there and as was harmonized, and</p> <p>5 under the circumstances if indeed it was 10-3 --</p> <p>6 you know, as we won the election in 2010 under</p> <p>7 Democrat maps, anything can happen in an</p> <p>8 election.</p> <p>9 Q. So the answer is, yes, you were satisfied that</p> <p>10 that criteria was satisfied?</p> <p>11 A. We believed that all of them were harmonized and</p> <p>12 everything was taken equally.</p> <p>13 Q. Everything was satisfied, correct?</p> <p>14 A. All criteria was satisfied.</p> <p>15 Q. Okay. And you can't remember if in the plan you</p> <p>16 rejected whether the partisan advantage criteria</p> <p>17 was satisfied?</p> <p>18 A. I think the main problem that I had, that got my</p> <p>19 attention, was the number of split counties and</p> <p>20 split VTDs, and that automatically would have</p> <p>21 rejected that map.</p> <p>22 Q. So as I understand, that's mostly relating to</p> <p>23 your compactness criteria, right?</p> <p>24 A. I looked at that as every one of them. I don't</p> <p>25 just pick out one and say this is the one I</p> <p style="text-align: right;">194</p>	<p>1 was -- when I selected the one that I needed or</p> <p>2 that I felt comfortable with -- and, of course,</p> <p>3 Representative Lewis had a vote in this too --</p> <p>4 that was the one that I focused on. So I don't</p> <p>5 remember.</p> <p>6 Q. Do you remember what any of the additional</p> <p>7 counties that were split were?</p> <p>8 A. No, ma'am.</p> <p>9 Q. So sitting here today, you can't tell me that --</p> <p>10 which one of these you may have seen before?</p> <p>11 A. Correct.</p> <p>12 Q. Did you leave that meeting with Dr. Hofeller the</p> <p>13 second day with any papers in hand?</p> <p>14 A. I don't remember doing so. I would have</p> <p>15 probably waited until all of the data was</p> <p>16 inputted into the -- into the state computer.</p> <p>17 Q. Okay. How long -- about how long did that</p> <p>18 meeting last that day?</p> <p>19 A. Probably an hour or two hours, maybe somewhere</p> <p>20 in there.</p> <p>21 Q. And safe to say you hadn't met with Dr. Hofeller</p> <p>22 in person between that first and second meeting?</p> <p>23 A. I don't recall meeting him before those two.</p> <p>24 Q. So walking into his house the second time, did</p> <p>25 you say, "Hey, Dr. Hofeller, is it possible to</p> <p style="text-align: right;">196</p>

<p>1 draw a 10-3 map"?</p> <p>2 A. We asked him which one of the maps conforms the</p> <p>3 best to what the criteria was, and he showed us</p> <p>4 the two choices. And the one that we selected</p> <p>5 was the map that is -- is before -- is the one</p> <p>6 that's been accepted and passed by the General</p> <p>7 Assembly, but each of them to one plus or minus</p> <p>8 extent achieved the criteria that we wanted to</p> <p>9 established. Not one of them is going to</p> <p>10 achieve everything.</p> <p>11 Of course, you know, taking in</p> <p>12 consideration the population is critical because</p> <p>13 that's required by the Constitution, but it's a</p> <p>14 blending of it. We just picked and choose the</p> <p>15 ones that we felt we could do and achieve the</p> <p>16 criteria that were established.</p> <p>17 Q. What did Dr. Hofeller represent to you about the</p> <p>18 partisan advantage in the two plans that he</p> <p>19 presented to you?</p> <p>20 A. I'm trying to remember how much of a discussion</p> <p>21 we had on that thing. I'm not sure there was a</p> <p>22 lot of detail. I just don't remember exactly</p> <p>23 what part of that we discussed.</p> <p>24 Q. You would have had to discuss it, though, right,</p> <p>25 because it was a criteria?</p> <p style="text-align: right;">197</p>	<p>1 criteria?</p> <p>2 A. That was not the prime goal of saying which one</p> <p>3 could achieve all of those factors, all of the</p> <p>4 criteria. It isn't just that. You keep harping</p> <p>5 on that. That's not the only thing that was</p> <p>6 important.</p> <p>7 Q. Well, I want to know how you were satisfied that</p> <p>8 all the criteria were met.</p> <p>9 A. To the -- you match all the criteria to the best</p> <p>10 possible. Again, it was, one, if it looked</p> <p>11 good, which was definitely better than what we</p> <p>12 had as far as appearance was concerned.</p> <p>13 Secondly, that the counties that</p> <p>14 were -- you know, you could easily see which</p> <p>15 ones were split and not and then he could give</p> <p>16 us some feedback as to what VTDs were.</p> <p>17 I mean, those were some of the factors</p> <p>18 that you tried to get as close as possible to.</p> <p>19 Q. I understand, but you had to satisfy yourself</p> <p>20 that all of the criteria had been satisfied and</p> <p>21 harmonized. You were -- ultimately the buck</p> <p>22 stopped with you?</p> <p>23 A. Representative Lewis and myself.</p> <p>24 Q. Right. So at some point you had to be sure that</p> <p>25 that goal had been met, right?</p> <p style="text-align: right;">199</p>
<p>1 A. It may have been. Again, the criteria was</p> <p>2 critical to me first and then especially dealing</p> <p>3 with the -- you know, we had a lot of questions</p> <p>4 raised by the court on the compactness, which is</p> <p>5 the counties, and then the VTDs. So that was an</p> <p>6 important issue for me to get resolved to the</p> <p>7 best possible way.</p> <p>8 Q. Okay. Was he using the 10-3 terminology too?</p> <p>9 A. He -- I don't remember if he went ahead and said</p> <p>10 that this was a 10-3 map that he could guarantee</p> <p>11 or anything like that. I don't believe that --</p> <p>12 you know, who knew what really would be until</p> <p>13 you get your real stat packs in there to exactly</p> <p>14 determine what you might have.</p> <p>15 Q. But were you under the impression that</p> <p>16 Dr. Hofeller was analyzing the political data as</p> <p>17 he was drawing the maps?</p> <p>18 A. I think he was putting in the election results</p> <p>19 that was part of the criteria. So I'm assuming</p> <p>20 that he had some idea as to what was done</p> <p>21 because that's part of what was being put</p> <p>22 together since race and partisan registration</p> <p>23 were not factors.</p> <p>24 Q. So if he didn't use the 10-3 terminology, did he</p> <p>25 say this satisfies your partisan advantage</p> <p style="text-align: right;">198</p>	<p>1 A. We did it to the best of our ability.</p> <p>2 Q. Right. And so I want to understand if you're</p> <p>3 not doing any sort of independent analysis, was</p> <p>4 Dr. Hofeller telling you that, yes, this</p> <p>5 satisfies all the criteria?</p> <p>6 A. I think we probably got the best look at it when</p> <p>7 the stat packs came out as to be able to say,</p> <p>8 you know, what did the elections do, how did</p> <p>9 they, you know, come about.</p> <p>10 Q. But you told me that you left that meeting</p> <p>11 decided on this was our plan.</p> <p>12 A. Yes, and we thought that would be the best way</p> <p>13 that achieved all of the criteria that we had,</p> <p>14 every one of them.</p> <p>15 Q. So you knew that before you saw the stat pack at</p> <p>16 the General Assembly the next day?</p> <p>17 A. Well, we validated it with the stat pack.</p> <p>18 Q. Okay. That's fine, but you knew it at the end</p> <p>19 of that day?</p> <p>20 A. It was our best guess.</p> <p>21 Q. And it was based on what Dr. Hofeller told you?</p> <p>22 A. It was based on the map, the way it looked and</p> <p>23 the information that he did share with us the</p> <p>24 best he could.</p> <p>25 Q. And you didn't necessarily go one by one in</p> <p style="text-align: right;">200</p>

<p>1 criteria since -- through the criteria list</p> <p>2 since you were more concerned about --</p> <p>3 A. It was a blending. There's no way you just pick</p> <p>4 out does this fit, does this fit.</p> <p>5 Q. Okay. So I understand that basis. I still want</p> <p>6 to understand everything he told you about the</p> <p>7 partisan performance of this map, the one you</p> <p>8 went with.</p> <p>9 A. I'm trying to remember exactly what part of it</p> <p>10 he was able to share with us only because of the</p> <p>11 fact that I'm not sure that anybody was</p> <p>12 guaranteed that one was a 10-3 or a 9-4 or</p> <p>13 whatever it may be because there's no way of</p> <p>14 being sure.</p> <p>15 You go back to the 2010 election, you</p> <p>16 know, things change and, you know, things happen</p> <p>17 differently.</p> <p>18 We just felt that this was a map that</p> <p>19 met the criteria, that was established in our</p> <p>20 criteria and one did not meet all of that</p> <p>21 criteria, especially when it started splitting</p> <p>22 extra counties.</p> <p>23 Q. Right. Okay. I follow.</p> <p>24 Did he say "There's no guarantees this</p> <p>25 is a 10-3 map"?</p> <p style="text-align: right;">201</p>	<p>1 Q. I'm still struggling to understand how you were</p> <p>2 satisfied that the enacted plan satisfied all</p> <p>3 the criteria and one of the criteria being the</p> <p>4 partisan advantage.</p> <p>5 So did he tell you which election</p> <p>6 results he had used in his map drawing?</p> <p>7 A. He didn't specifically explain that to me or</p> <p>8 tell me that. It was a matter of just</p> <p>9 determining which one seemed to fit the criteria</p> <p>10 as best we could.</p> <p>11 Again, you know, partisan was one part</p> <p>12 of it, but it wasn't the only part of it.</p> <p>13 Compactness was critical to it. There's just</p> <p>14 not one -- one you pull out and say that's the</p> <p>15 one I want.</p> <p>16 Q. I know, but you've talked about a metric for</p> <p>17 compactness. You talked about Hofeller told you</p> <p>18 about the number of counties kept whole, the</p> <p>19 number of VTDs kept whole, so you're using some</p> <p>20 metric there. I want to understand what is the</p> <p>21 metric he was telling you with respect to</p> <p>22 political performance for the map.</p> <p>23 A. I'm trying to remember what he said, and I'm not</p> <p>24 sure I can tell you exactly that. You know,</p> <p>25 some folks may call it a 10-3 map. I know</p> <p style="text-align: right;">203</p>
<p>1 A. I would have to say to you that nobody can</p> <p>2 guarantee any of that.</p> <p>3 Q. That wasn't my question.</p> <p>4 Did he tell you that?</p> <p>5 A. I don't recall him saying it.</p> <p>6 Q. Okay. Was it something that you just knew to be</p> <p>7 true always? There's no guarantees in</p> <p>8 elections?</p> <p>9 A. There really isn't any guarantees in elections.</p> <p>10 I mean, you know, none of those districts were</p> <p>11 majority Republican districts.</p> <p>12 Q. Okay. By registration?</p> <p>13 A. By registration, right. Or -- well, if someone</p> <p>14 is a "U," are they an "R" or a "D."</p> <p>15 I'm talking about the fact that by</p> <p>16 registration, there's no way of knowing that and</p> <p>17 that's why it was built on election results.</p> <p>18 Q. But you had instructed Dr. Hofeller not to use</p> <p>19 registration data. So you weren't talking about</p> <p>20 registration data with him that day?</p> <p>21 A. I'm talking about subsequent, when you look at</p> <p>22 the results similar to what we did on the</p> <p>23 enacted maps. You know, at some point you look</p> <p>24 at them and say, wait a minute, there are no</p> <p>25 majority Republicans in this district.</p> <p style="text-align: right;">202</p>	<p>1 that's what was discussed on it, but I can't say</p> <p>2 to you -- nor did we have an abundance -- too</p> <p>3 much time to resolve this issue. Our goal was</p> <p>4 to get this before the court on the 19th. So we</p> <p>5 did the best we could with what we had, the time</p> <p>6 limit.</p> <p>7 Q. So you didn't talk about how the proposed</p> <p>8 districts would have performed using 2010 U.S.</p> <p>9 Senate election results?</p> <p>10 A. I don't remember discussing that with him.</p> <p>11 Q. And you did not discuss with him how those</p> <p>12 districts would have performed using 2012</p> <p>13 gubernatorial election results?</p> <p>14 A. I never remember Dr. Hofeller mentioning that --</p> <p>15 that -- the fact or the statistic.</p> <p>16 Q. Okay. Going to the criteria and the decision to</p> <p>17 not use registration data, I understood you told</p> <p>18 Ms. Mackie that the courts have said that</p> <p>19 election results are more probative.</p> <p>20 A. Predictable.</p> <p>21 Q. Predictable?</p> <p>22 A. Yeah.</p> <p>23 Q. Do you understand that map drawer -- that</p> <p>24 there's any legal prohibition on using</p> <p>25 registration data in map drawing?</p> <p style="text-align: right;">204</p>

<p>1 A. No. I mean, that was some of the evidence that 2 was in the Harris case, a gentleman from Harvard 3 talked about that and there was a real question 4 as to whether -- and the courts have ruled on it 5 that they said registration is not as 6 predictable as election results. So I know 7 there's no prohibition on it. It's just a 8 matter of what you think is the better way to do 9 it or not. 10 Q. So why prohibit him from using it? 11 A. We just felt it wasn't what we wanted to do. 12 Q. You looked at it later? 13 A. Partisan -- well, after the map was done, yeah. 14 I mean, I didn't -- I didn't look at the final 15 map that -- in the stat pack that included all 16 of the other changes until after the map was 17 passed. You know, that was something that 18 Senator McKissick had asked for when he wanted 19 to have a similar stat pack to 2011. 20 Q. Okay. 21 MR. STRACH: Allison, is this a good 22 stopping point to take a break? 23 MS. RIGGS: It's actually a great 24 stopping point. 25 THE VIDEOGRAPHER: Off the record at</p> <p style="text-align: right;">205</p>	<p>1 would have won and who wouldn't have won. And, 2 you know, again, in a shortened cycle, you know 3 as well as I do you need money to win these 4 elections. It was a tight time to try to 5 generate that for anybody other than a 6 non-incumbent -- for anybody other than an 7 incumbent. So no. 8 Q. Did you -- so I used Pittenger as an example. 9 Did you speak about any other particular 10 congressional incumbent? 11 A. As to their likelihood of winning? 12 Q. Yes. 13 A. I did not speak on that. 14 Q. So is it your testimony that you spoke with 15 Dr. Hofeller about none of the current 16 incumbents with respect to their ability to get 17 reelected in November? 18 A. No. The only thing we talked about was where 19 are they in the district. 20 Q. Okay. Leaving that -- okay. 21 Did you have any discussion with 22 Dr. Hofeller about durability? And by that I 23 mean one of your criteria was aiming for a 10-3 24 delegation. Did you have any discussion about 25 whether it would be a 10-3 delegation for the</p> <p style="text-align: right;">207</p>
<p>1 4:00 p.m. 2 (Brief Recess.) 3 THE VIDEOGRAPHER: On record at 4 4:14 p.m. 5 BY MS. RIGGS: 6 Q. Just a couple last questions about your second 7 meeting at Dr. Hofeller's house when you 8 reviewed the two maps. 9 Did you have any discussion with him 10 about the two maps about how incumbents might 11 fair in future elections? So that's to say, did 12 you look at the map and say "Dr. Hofeller, can 13 Pittenger win in this district"? 14 A. I didn't ask that question, nor did he tell me 15 that, but the fact is since it was a different 16 primary day, I'm not even sure you could make 17 that judgment because having a primary in June, 18 the people that would have run it are running 19 against an incumbent who are having a very 20 difficult time running. So it's not like an 21 ordinary election year if you know what I'm 22 saying to you. 23 Q. The primary, but the general election was the 24 same normal time, right? 25 A. Well, of course, but in the primary you know who</p> <p style="text-align: right;">206</p>	<p>1 rest of the decade? 2 A. No, we did not. It just doesn't last over time. 3 It withers away as was evident in the 2010 4 legislative elections. Districts change -- 5 Q. Sure. 6 A. -- during that period of time, so chances are 7 you cannot guarantee anything like that. 8 Q. Your goal -- but you're a Republican, right, 9 sir? 10 A. Yes. 11 Q. Your goal was to maintain Republican advantage 12 for as long as possible, correct? 13 MR. STRACH: Objection. 14 THE WITNESS: My goal was to get a map 15 in front of the Harris court that they would 16 approve and not have to redraw it or do 17 something like that. That was my have goal, as 18 it was the 2011 to get the pre-clearance on the 19 maps. I mean, those are -- those -- there's no 20 election without that being done. So my job was 21 to get the election maps ready so there could be 22 an election. That's my goal. 23 BY MS. RIGGS: 24 Q. But you didn't think there was anything such as 25 thing as an unconstitutional partisan</p> <p style="text-align: right;">208</p>

<p>1 gerrymander, right?</p> <p>2 MR. STRACH: Objection.</p> <p>3 Answer that if you can.</p> <p>4 THE WITNESS: The way the law -- the</p> <p>5 way my understanding -- and I'm not a lawyer.</p> <p>6 My understanding is that the partisan</p> <p>7 gerrymandering did not occur.</p> <p>8 BY MS. RIGGS:</p> <p>9 Q. So sitting there with Dr. Hofeller that second</p> <p>10 day, you didn't think the Harris court was going</p> <p>11 to reject a map because it created a 10-3 split,</p> <p>12 did you?</p> <p>13 A. After the result of the Harris case, I didn't</p> <p>14 know what the Harris court was going to do</p> <p>15 because I never expected them to reject the map</p> <p>16 that we had, especially based on the evidence</p> <p>17 that was there in front of the three-judge</p> <p>18 panel.</p> <p>19 Q. So you were worried that having it be too</p> <p>20 extreme as far as partisan split could create a</p> <p>21 problem?</p> <p>22 A. All I'm saying, to answer your question, I</p> <p>23 didn't know what the court was going to do so</p> <p>24 that's why we put the criteria that we believed</p> <p>25 addressed the concerns of the court.</p> <p style="text-align: right;">209</p>	<p>1 some of the criteria that was necessary to</p> <p>2 achieve our goal. In essence, you would have</p> <p>3 gone beyond the limit of the counties that we</p> <p>4 had. I mean, we have an ideal number of</p> <p>5 counties, you know, 13 counties and 12 VTDs. I</p> <p>6 mean, that's where the splits occur.</p> <p>7 You know, best I could guess and best</p> <p>8 judgment that I had that might have been</p> <p>9 pressing the issue beyond the ability to do it.</p> <p>10 Q. So Dr. Hofeller told you that?</p> <p>11 A. That was my judgment.</p> <p>12 Q. What does that mean?</p> <p>13 A. That's my experience that I would have had.</p> <p>14 Dr. Hofeller didn't offer 11-2 and I didn't ask</p> <p>15 for an 11-2.</p> <p>16 Q. Likewise, Dr. Hofeller didn't offer a 9-4 and</p> <p>17 you didn't ask for a 9-4?</p> <p>18 A. I wanted to see what could be done to deliver</p> <p>19 the criteria that we established. We believed</p> <p>20 had this been done like was supposed to be done</p> <p>21 in setting the criteria that our goal was to get</p> <p>22 the court to approve our map so that it could</p> <p>23 allow for the election. It was already delayed</p> <p>24 over a month, so that's not -- we weren't happy</p> <p>25 with the fact that -- that's not what you try to</p> <p style="text-align: right;">211</p>
<p>1 Q. Do you think a map that had shot for a 9-4</p> <p>2 division might have been more likely to get</p> <p>3 approved by the Harris court?</p> <p>4 A. I had no way of knowing what the Harris court</p> <p>5 was going to do. I was surprised at the</p> <p>6 original decision, to be very honest with you.</p> <p>7 Q. So you had no discussion about durability.</p> <p>8 Leaving that meeting that day, were</p> <p>9 you, in essence, happy with what you bought,</p> <p>10 happy with what Dr. Hofeller did?</p> <p>11 MR. STRACH: Objection.</p> <p>12 Answer if you can.</p> <p>13 THE WITNESS: I was happy with the fact</p> <p>14 that the process was going, and our goal was to</p> <p>15 get the maps -- the map approved and ready to be</p> <p>16 delivered on the 19th to the court. That was my</p> <p>17 principal goal to get it done.</p> <p>18 BY MS. RIGGS:</p> <p>19 Q. And you never -- when you reviewed the map, you</p> <p>20 never asked Dr. Hofeller, after having woven in</p> <p>21 all the criteria, was it possible to draw an</p> <p>22 11-2 map?</p> <p>23 A. I think in talking with Dr. Hofeller on any of</p> <p>24 this stuff, my judgment would have been that if</p> <p>25 we'd try to draw an 11-2 map, we would have lost</p> <p style="text-align: right;">210</p>	<p>1 do during an election.</p> <p>2 Q. So based on your extensive experience chairing</p> <p>3 the redistricting committee and being involved</p> <p>4 in redistricting, you think it was possible to</p> <p>5 draw a map that satisfied all of the criteria</p> <p>6 but the 10-3?</p> <p>7 A. Repeat that question again.</p> <p>8 Q. And if you want -- if it would help you to look</p> <p>9 at the criteria list that's Exhibit 24.</p> <p>10 A. I've got it here.</p> <p>11 Q. Could you have drawn a map that had equal</p> <p>12 population, was contiguous, had limited</p> <p>13 political data, compressed the 12th district,</p> <p>14 was compact and protected incumbents and yet</p> <p>15 wasn't a 10-3 split?</p> <p>16 A. I still think the 10-3 is something that may not</p> <p>17 be a reality. I think it's more of an</p> <p>18 aberration. You know, to be -- I think that it</p> <p>19 just wasn't an ordinary election this last time,</p> <p>20 you know.</p> <p>21 Q. We'll get to that. I'm going to have some more</p> <p>22 questions about that, but you were satisfied</p> <p>23 that the 10-3 criteria was satisfied. And what</p> <p>24 I'm asking you is could you have drawn a map</p> <p>25 that satisfied all of the rest of the criteria</p> <p style="text-align: right;">212</p>

<p>1 and been 9-4 based on your broad and -- broad 2 knowledge in North Carolina? 3 A. I don't know. 4 Q. You didn't look? 5 A. I didn't look. 6 Q. Next, I want to sort of ask a few questions 7 about the process. 8 As I understood it, you -- one of the 9 things you said with Ms. Mackie is you offered 10 the Democrats an opportunity to submit another 11 map -- to submit an alternative map during the 12 legislative process but they didn't; is that 13 right? 14 A. They were -- as they did in the 2011, I spoke 15 with Senator McKissick on numerous occasions, 16 money was available, computer was available and 17 all of that stuff. There was never a map done 18 on the time -- to include it in, again, the 19 minority, both House and Senate, chose never -- 20 to not deliver one. So that was their decision, 21 I imagine. 22 Q. Am I correct, though, that the minority members 23 didn't know what the criteria were until that 24 meeting on the 16th? 25 A. They -- the criteria that we established was</p> <p style="text-align: right;">213</p>	<p>1 computer before it was discussed in that meeting 2 on the 16th? 3 A. There was some discussion on that with -- I just 4 don't remember when that was brought to their 5 attention, whether -- you know, whether the 6 state would have paid money for it or whether 7 they would have found another way to deliver and 8 subsequently supported by the State, but, you 9 know, if they felt it was important enough to 10 draw alternative maps that they believe were in 11 line with what the court asked for, they would 12 have had the same opportunity as of the decision 13 on February 5th to do the same thing. 14 Q. But they weren't -- there was no legislative 15 action to authorize their use of computers and 16 state money until the 16th, correct? 17 A. There was -- the same thing was done in the 18 original, so that's why we did it, you know, in 19 the original time we did in 2011. So that time 20 we did the same thing at this point, you know 21 with the \$25,000 so we're consistent with what 22 we -- how everybody was treated. 23 Q. So the answer is, yes, it wasn't until the 16th 24 that there was legislative action to -- 25 A. I don't recall if they were notified earlier.</p> <p style="text-align: right;">215</p>
<p>1 there. Had they established their own criteria 2 they would have been able to bring it up during 3 the initial discussion when the criteria was 4 established, when we voted on each of the 5 criteria. 6 Q. Well, they did, right, they had amendment 7 criteria that they proposed? 8 A. But there was no map to show that this is how it 9 would have been done. 10 Q. Right, but it's reasonable, isn't it, to want to 11 know what the criteria are to see then what you 12 can do? 13 A. Every one of those -- I mean, other than the 14 12th district, that really is a consolidation, 15 it's all the traditional redistricting 16 principles. 17 Q. On the joint hearing on the 16th, the Democrats 18 did not have these criteria in hand, correct? 19 A. They -- that was the time that they had a chance 20 to discuss it, have it explained and to vote on 21 it. 22 Q. Do you know when the notice for the joint 23 hearing on the 16th went out? 24 A. I do not. 25 Q. Did the Democrats know that they had money and a</p> <p style="text-align: right;">214</p>	<p>1 Q. Okay. At any point between February 5th and the 2 enactment of the plan, did you have a Republican 3 caucus meeting? 4 A. Between February 5th -- I'm sure there were 5 Republican caucus meetings during the time that 6 we were called back in. 7 Is that what you're asking? 8 Q. Yes. 9 A. Yes, I'm sure we had. 10 Q. Whole caucus or broken up by Senate and House? 11 A. Likely it -- I don't think we had any joint 12 caucus meetings, so it would have been Senate 13 and House had their own private conference, 14 private meetings. 15 Q. And did you have multiple Senate Republican 16 caucus meetings during that special session? 17 A. I don't recall how many of them we had. 18 Q. Did you have any meetings prior to introducing 19 the criteria? 20 A. I don't recall. 21 Q. Did you have any Republican -- Senate Republican 22 caucus meetings after you'd seen the draft map, 23 the draft -- the two draft maps that 24 Dr. Hofeller showed you at that second visit? 25 A. I'm trying to remember when did we get called</p> <p style="text-align: right;">216</p>

<p>1 back in because unless they were there, all the</p> <p>2 members, there would not have been a caucus. I</p> <p>3 just don't remember what day we were called back</p> <p>4 in for that. I don't think we were called back</p> <p>5 in on the 15th which was the public hearing. A</p> <p>6 lot of people were in their home locations</p> <p>7 helping with the public hearing. So that would</p> <p>8 have had to have been Tuesday.</p> <p>9 So you're asking the question --</p> <p>10 Q. Well, this is helpful. I'm trying to pin down</p> <p>11 when there was Senate Republican caucus</p> <p>12 meetings.</p> <p>13 A. I don't remember the day we were called back in</p> <p>14 and whether it was Tuesday or not and whether it</p> <p>15 was everybody or just the Redistricting</p> <p>16 Committee or the Joint Redistricting Committee</p> <p>17 ultimately.</p> <p>18 Q. By the first floor meeting -- floor debate</p> <p>19 everyone had to be called back?</p> <p>20 A. Senate debate.</p> <p>21 Q. Yes.</p> <p>22 A. I would assume yes.</p> <p>23 Q. But you don't know if everyone would had to have</p> <p>24 been called back between the Senate</p> <p>25 Redistricting Committee and the Senate floor?</p> <p style="text-align: right;">217</p>	<p>1 Q. Okay.</p> <p>2 A. The best I -- I don't believe we -- it was</p> <p>3 part -- it was public at that point.</p> <p>4 Q. Did you explain to members of the Senate</p> <p>5 Republican caucus your support for the version</p> <p>6 of the map that you chose?</p> <p>7 A. If in explaining -- well, if it was in the</p> <p>8 caucus and we did, I urged everybody, House</p> <p>9 Republicans and Democrats, to attend the caucus</p> <p>10 meetings -- not caucus -- the committee meetings</p> <p>11 even if they weren't on the committee. So by</p> <p>12 the time we actually had a Senate floor, there</p> <p>13 were about 40 members who had already been</p> <p>14 briefed at least twice as to what was in the</p> <p>15 map, what the criteria was and all of that</p> <p>16 thing.</p> <p>17 So we made an effort to try to make</p> <p>18 sure that as many people, even if you weren't on</p> <p>19 the committee, could come in to attendance so</p> <p>20 that everybody would have numerous opportunities</p> <p>21 to see what was going on and understand it.</p> <p>22 Q. I wasn't asking about the committee meeting. I</p> <p>23 was asking about the caucus meeting.</p> <p>24 So obviously no Democrats were invited</p> <p>25 to the Senate Republican --</p> <p style="text-align: right;">219</p>
<p>1 A. Correct. Because it could have been -- and I</p> <p>2 just don't remember what day we were called back</p> <p>3 in. It could have been the redistricting folks</p> <p>4 might have been called back in because it was a</p> <p>5 committee meeting like that, but I don't</p> <p>6 remember.</p> <p>7 Q. Did you ever have sub caucus meetings when just</p> <p>8 the redistricting committee folks were around?</p> <p>9 A. No. The only time we had caucus -- not</p> <p>10 caucus -- committee meetings, it was posted.</p> <p>11 Q. No. But I'm asking about caucus meetings.</p> <p>12 Did you have whoever was available from</p> <p>13 the Republican caucus meet?</p> <p>14 A. Not that I remember.</p> <p>15 Q. So you did meet, but we're not sure when, the</p> <p>16 Republican caucus?</p> <p>17 A. There were caucus meetings during the time that</p> <p>18 we were called back in.</p> <p>19 Q. Okay. And did you take the map that you and</p> <p>20 Representative Lewis had approved to the</p> <p>21 Republican caucus meeting?</p> <p>22 A. I think that was -- at the time it was brought</p> <p>23 forward in the -- when the joint caucus -- the</p> <p>24 joint caucus voted on it, I believe it was put</p> <p>25 on the website and so it would have been public.</p> <p style="text-align: right;">218</p>	<p>1 A. So repeat your question.</p> <p>2 Q. So did you explain to members of the Senate</p> <p>3 Republican caucus why you were supporting this</p> <p>4 plan?</p> <p>5 A. I probably would have explained the criteria</p> <p>6 that was there, and I probably would have said</p> <p>7 that this is the closest that we can get to</p> <p>8 achieve our criteria and then we believe that</p> <p>9 this would be the best plan to send forward to</p> <p>10 have the Harris court feel that we complied with</p> <p>11 all of the issues that the Harris court had</p> <p>12 brought to our attention.</p> <p>13 Q. And did you go through criteria by criteria and</p> <p>14 say it satisfied this, satisfied that?</p> <p>15 A. No, because the criteria was explained early on.</p> <p>16 And I don't know why you keep asking that. We</p> <p>17 don't do it on a one-by-one basis. It's overall</p> <p>18 broadly looked at and said does it work or does</p> <p>19 it not work. We're not pulling them out and</p> <p>20 saying this fits, well, you know, all of a</p> <p>21 sudden you make a change and if it goes from a</p> <p>22 90 to a 70 is that good or bad, there's no way</p> <p>23 of measuring that. So it's looked at through</p> <p>24 the broad picture.</p> <p>25 Q. What did you tell members of the Senate</p> <p style="text-align: right;">220</p>

<p>1 Republican caucus about the political 2 performance of this map?</p> <p>3 A. I told them that this meets the needs of what we 4 believe that the criteria wanted us to establish 5 and that the court would be able to accept.</p> <p>6 Q. Did you represent that this would likely produce 7 a 10-3?</p> <p>8 A. I don't recall if I mentioned that or not.</p> <p>9 Q. You can't recall if you mentioned that to your 10 fellow Republicans?</p> <p>11 A. No. It was six, eight months ago. At that 12 point I'm talking about it. I mean, everybody 13 was discussing it in committee meetings. So I 14 just don't recall that.</p> <p>15 Q. Did you make any representations about whether 16 Republican incumbents would be treated well 17 under this new map?</p> <p>18 A. Well, the incumbency, everybody knows what it 19 was, it was there as best we could. One 20 Republicans -- two Republicans were put into -- 21 well, not really. As it turned out, they ran -- 22 Holding ran in the 2nd district even though he 23 was in the 4th. Price and Holding were in the 24 4th together. So I'm not sure that's good or 25 bad on that -- on that issue.</p> <p style="text-align: right;">221</p>	<p>1 didn't get the names transcribed over there 2 where it says GV, and I think that's where 3 governor would be and things like that.</p> <p>4 Q. Sure.</p> <p>5 A. I think in the subsequent stat pack that came 6 out that was requested by Senator McKissick and 7 delivered, it had the names rather than the keys 8 or the codes.</p> <p>9 Q. Can you turn to the sixth page with me. It's 10 the 2010 General Election Results for the U.S. 11 Senate?</p> <p>12 A. Sixth page.</p> <p>13 Q. They're not numbered. I counted it.</p> <p>14 A. So election results 2010 or --</p> <p>15 Q. Yes, 2010 general USS.</p> <p>16 A. Got it.</p> <p>17 Q. Can you look at the third column which is the 18 percent that the Democratic candidate got in the 19 2010 election. And can you count up how many -- 20 in how many of the congressional districts did a 21 Democrat -- did the Democrat win based on these 22 reconstituted election results?</p> <p>23 A. I see three.</p> <p>24 Q. Okay. So using the 2010 Senate race, it's a 25 10-3 plan?</p> <p style="text-align: right;">223</p>
<p>1 Repeat your question one more time.</p> <p>2 Q. Did you -- when you were in that Senate 3 Republican caucus meeting, did you make any 4 representations to the caucus members about how 5 incumbents -- Republican incumbents would fair 6 under this new map?</p> <p>7 A. I don't believe this is a 10-3 map in a normal 8 election.</p> <p>9 Q. It was a 10-3 in 2016, correct?</p> <p>10 A. I think that's not a normal election.</p> <p>11 Q. Okay. Well, since we're going to talk about 12 that, why don't you pull out Exhibit 27.</p> <p>13 We're done with that.</p> <p>14 Do you recognize this document?</p> <p>15 A. Yes, ma'am. That was the stat pack that came 16 from -- in the original version of -- or just -- 17 I say stat pack. It's probably not that.</p> <p>18 What it is it talks about the election 19 results that were included. Unfortunately, I 20 don't see it, but there's supposed to be a key 21 to it to determine which one is which.</p> <p>22 Q. If it would help you as we're going through --</p> <p>23 A. There's the key.</p> <p>24 Q. -- this is 28.</p> <p>25 A. Somehow or another it was done quickly and we</p> <p style="text-align: right;">222</p>	<p>1 A. Yes.</p> <p>2 Q. 10 Republicans, 3 Democrats?</p> <p>3 A. That's what I read.</p> <p>4 Q. Was 2010 -- the 2010 election a normal election?</p> <p>5 A. I don't believe -- it was probably more normal 6 than this one because of all of the confusion 7 with the changing of the primary dates and which 8 districts people were going to be running in.</p> <p>9 I don't think this one is a normal 10 election in any way because there were probably 11 still people out there wondering what precincts 12 or what districts they were running in or they 13 were supposed to vote in.</p> <p>14 Q. So the only thing that made 2016 not normal was 15 the changing of the primary dates?</p> <p>16 A. Well, that's part of it. And when people were 17 running in different districts, different 18 counties.</p> <p>19 Q. Doesn't that happen after every redistricting?</p> <p>20 A. No, because they had already had two or three 21 elections -- I think it was two or three 22 elections they had run already under the 23 original enacted map. People were -- it was 24 towards the middle of the cycle.</p> <p>25 Q. So 2010 is a normal election by your metric,</p> <p style="text-align: right;">224</p>

<p>1 then?</p> <p>2 A. I would say to you yes. We've added probably</p> <p>3 750,000 new people into the state and things</p> <p>4 like that which change the demographics.</p> <p>5 Q. All right. Can you turn to the next page, then.</p> <p>6 At the top in blue, it says Election Results</p> <p>7 2012 General G and LG.</p> <p>8 Do you see that page?</p> <p>9 A. Okay, I've got Election Results 2012 General G</p> <p>10 and LG.</p> <p>11 Q. Yes.</p> <p>12 A. Okay.</p> <p>13 Q. So can you look at the third column which is the</p> <p>14 percent that the Democratic candidate got for</p> <p>15 governor, and scroll down there and count for</p> <p>16 me. In how many districts did the Democratic</p> <p>17 candidate win?</p> <p>18 A. In 2012.</p> <p>19 Q. For the governor.</p> <p>20 A. Uh-huh. I see three.</p> <p>21 Q. Okay. So using that election results metric,</p> <p>22 this is a 10-3 plan with Republicans having 10</p> <p>23 and Democrats having 3, right?</p> <p>24 A. Yes.</p> <p>25 Q. So then can you scroll over, same page, the 14th</p> <p style="text-align: right;">225</p>	<p>1 very unusual election, not with only the changes</p> <p>2 that occurred but also on the presidential side</p> <p>3 too. This was what you call not a normal year.</p> <p>4 Q. I understood your position, and your position is</p> <p>5 this isn't a 10-3 plan because 2016 is unusual,</p> <p>6 but we've just gone back and seen that 2010 and</p> <p>7 2012 election results reconstituted also</p> <p>8 indicated it was a 10-3 plan.</p> <p>9 So my question is: Was 2012 an unusual</p> <p>10 or not normal election?</p> <p>11 A. I don't know the answer to that.</p> <p>12 Can we look at Roy Cooper's election?</p> <p>13 Q. Your counsel can ask you about that. I'm done</p> <p>14 with that exhibit.</p> <p>15 Senator Rucho --</p> <p>16 A. Both of them?</p> <p>17 Q. Yes, I'm done with them.</p> <p>18 Did you have that stat pack in hand</p> <p>19 when you met with the Senate Republican caucus?</p> <p>20 A. This stat pack?</p> <p>21 Q. Yes. Probably right because it was produced</p> <p>22 with the Redistricting Committee meeting.</p> <p>23 A. It probably would have been part of the public</p> <p>24 record on the screen. I can't remember if I had</p> <p>25 it in my hand when we talked, and if we talked,</p> <p style="text-align: right;">227</p>
<p>1 column -- actually, the easiest, it's the fourth</p> <p>2 one from the right. It's pct_EL12G_LG_D.</p> <p>3 Do you see that column?</p> <p>4 A. No. Tell me again where that is.</p> <p>5 Q. It's the fourth column from the right.</p> <p>6 A. On which page again?</p> <p>7 Q. Same page we were on before.</p> <p>8 A. Sorry.</p> <p>9 Q. It's the lieutenant governor's race.</p> <p>10 A. Under the LG.</p> <p>11 Q. It's the fourth column from the right, and the</p> <p>12 column title is pct_EL12G_LG_D.</p> <p>13 Do you see that?</p> <p>14 A. Okay.</p> <p>15 Q. Now, can you scroll down through that list and</p> <p>16 tell me how many -- and that's the percent that</p> <p>17 the Democratic candidate got in the lieutenant</p> <p>18 governor race in 2012.</p> <p>19 Can you tell me in how many districts</p> <p>20 did the Democratic candidate win?</p> <p>21 A. It looks like three.</p> <p>22 Q. So that -- using that metric, this 2016</p> <p>23 Contingent Plan is a 10-3 map, right?</p> <p>24 A. As far as past election experience, it appears</p> <p>25 to be, but yet again, this 2016 election was a</p> <p style="text-align: right;">226</p>	<p>1 I can't remember that, but okay.</p> <p>2 Q. So you don't remember if you discussed any of</p> <p>3 these specific election results with --</p> <p>4 A. People would have gone on their own to the stat</p> <p>5 pack, and we encourage that, actually, as we did</p> <p>6 during one of the committee meetings. I think</p> <p>7 Senator Ford had asked questions, and once he</p> <p>8 was given the key or the code, he was able to...</p> <p>9 Q. Can you grab the criteria?</p> <p>10 A. Got it.</p> <p>11 Q. All right. Did you ever have any discussions</p> <p>12 with Dr. Hofeller -- and I think you sort of</p> <p>13 were skirting around with this because there was</p> <p>14 an issue with Representative Holding and</p> <p>15 Representative Price and Representative Elmers</p> <p>16 living pretty close to each other.</p> <p>17 Did you ever have a discussion with</p> <p>18 Dr. Hofeller about whether it was possible to</p> <p>19 keep them in their own -- each in their own</p> <p>20 district if you relaxed the equal population</p> <p>21 requirement a little bit, so maybe had</p> <p>22 population deviations of 10 or a hundred?</p> <p>23 A. I don't see that -- I don't see there's any way</p> <p>24 to compromise on the equal population.</p> <p>25 Q. So on that criteria no compromise?</p> <p style="text-align: right;">228</p>

<p>1 A. That's not my choice. That's mandated.</p> <p>2 Q. But on the incumbency criteria, that was allowed</p> <p>3 to be compromised?</p> <p>4 A. There's a give and a take on most every other</p> <p>5 one, but on the -- you had to be there, at least</p> <p>6 that was my understanding under the court</p> <p>7 requirement.</p> <p>8 Q. Can you pull up -- pull out Exhibit 25, which is</p> <p>9 the enacted map, and keep the criteria out.</p> <p>10 A. Is this it?</p> <p>11 Q. No. It's a single piece of paper floating</p> <p>12 around. There you go. Thank you.</p> <p>13 So looking at the compactness criteria,</p> <p>14 which is on the second page of the criteria --</p> <p>15 go back to the criteria exhibit.</p> <p>16 A. Okay, got it.</p> <p>17 Q. The compactness one on the second page. It</p> <p>18 says:</p> <p>19 "Division of counties shall only be</p> <p>20 made for reasons of equalizing population,</p> <p>21 consideration of incumbency and political</p> <p>22 impact."</p> <p>23 Did I read that right?</p> <p>24 A. That's what it says.</p> <p>25 Q. So in the enacted plan that you have in front of</p> <p style="text-align: right;">229</p>	<p>1 go through each split VTD and tell you why he</p> <p>2 decided to split that VTD?</p> <p>3 A. No.</p> <p>4 Q. So you don't know sitting here today whether</p> <p>5 VTDs were split for equal population reasons or</p> <p>6 political impact reasons?</p> <p>7 A. All I know is that he followed the criteria to</p> <p>8 the best he could to get it achieved.</p> <p>9 Q. And you were satisfied with that representation</p> <p>10 by Dr. Hofeller?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. If you don't mind -- well, going back, you've</p> <p>13 had the opportunity to review a whole lot of</p> <p>14 election results over the last 15 years when --</p> <p>15 in your work on redistricting, right?</p> <p>16 A. I haven't been on redistricting for 15 years.</p> <p>17 Q. Well, you've voted on it.</p> <p>18 A. Well, I think in the last -- since 2011 is where</p> <p>19 I had to be responsible for it.</p> <p>20 Q. Okay. So since 2011 you've spent a lot of time</p> <p>21 with redistricting and, by necessity, election</p> <p>22 results, right?</p> <p>23 A. Where necessary.</p> <p>24 Q. Okay. Does that give you a sense of, you know,</p> <p>25 North Carolina's political bent?</p> <p style="text-align: right;">231</p>
<p>1 you, there's 13 county splits. Did Dr. Hofeller</p> <p>2 explain to you why each of those counties were</p> <p>3 split?</p> <p>4 A. He did not go in detail. It was part of what he</p> <p>5 felt he needed to do to implement our criteria.</p> <p>6 Q. So you left the -- you left it up to</p> <p>7 Dr. Hofeller to make the judgment that any</p> <p>8 county split was only split for equal</p> <p>9 population, consideration of incumbency or</p> <p>10 political impact, correct?</p> <p>11 A. That's correct. And there are 13 areas that</p> <p>12 this would be impacted --</p> <p>13 Q. So fair to say --</p> <p>14 A. -- out a 100.</p> <p>15 Q. So sitting here today, you can't tell me which</p> <p>16 of the 13 splits were for political impact as</p> <p>17 opposed to equal population?</p> <p>18 A. No.</p> <p>19 Q. Do you have any sense of which splits --</p> <p>20 understanding he didn't tell you that</p> <p>21 specifically, do you have any sense of which</p> <p>22 county splits were made for political impact?</p> <p>23 A. No.</p> <p>24 Q. Did -- same thing with all the split VTDs which</p> <p>25 aren't represented on this map, did Dr. Hofeller</p> <p style="text-align: right;">230</p>	<p>1 MR. STRACH: Objection; form.</p> <p>2 You can answer that if you can, if you</p> <p>3 know what that means.</p> <p>4 THE WITNESS: I don't. You might need</p> <p>5 to explain what you're asking for.</p> <p>6 BY MS. RIGGS:</p> <p>7 Q. Would you describe North Carolina as a swing</p> <p>8 state?</p> <p>9 MR. STRACH: Objection to form.</p> <p>10 THE WITNESS: It's hard. It changes.</p> <p>11 It could be a swing state. I mean, you've got</p> <p>12 two U.S. Senators that are Republican. You've</p> <p>13 got a Democrat governor now. You know, it could</p> <p>14 be what -- federal and state could make a</p> <p>15 difference too, you know, federal candidate may</p> <p>16 lean Republican and state candidates may lean</p> <p>17 Democrat.</p> <p>18 BY MS. RIGGS:</p> <p>19 Q. Okay. You don't take much stock from just</p> <p>20 looking at statewide voter registration</p> <p>21 breakouts, though, right?</p> <p>22 A. No, because, one, it changes; two, you really</p> <p>23 don't know whether somebody votes -- how they</p> <p>24 vote, actually. And then you have -- in the</p> <p>25 last few years you've had a significant growth</p> <p style="text-align: right;">232</p>

<p>1 in unaffiliated voters. Where do you categorize</p> <p>2 them.</p> <p>3 Q. Have you ever had the chance to go back and look</p> <p>4 at in congressional elections the share of the</p> <p>5 two-party vote statewide, so look at how many</p> <p>6 votes Republican congressional candidates get</p> <p>7 and how many votes Democratic candidates get?</p> <p>8 A. No reason to.</p> <p>9 Q. Okay. So you've never looked at that?</p> <p>10 A. (Witness shaking head from side to side.)</p> <p>11 Q. Would it surprise you to hear that Republicans</p> <p>12 win the two party -- the vote share of the two</p> <p>13 party with like 53 percent of the vote?</p> <p>14 A. Congressional races are not statewide elections.</p> <p>15 They're regional geographic elections. So you</p> <p>16 can't look at what a statewide vote is.</p> <p>17 You look at what each district actually</p> <p>18 does to elect their candidate. To me that would</p> <p>19 be apples and oranges.</p> <p>20 Q. Well, this metric I'm talking about is</p> <p>21 aggregating the votes from each district, so</p> <p>22 it's not comparing District 1 to District 12.</p> <p>23 It's just saying Republican candidates for</p> <p>24 Congress and all across the state get X number</p> <p>25 of votes and Democratic get Y number of votes.</p> <p style="text-align: right;">233</p>	<p>1 geographical areas. So I see no way of making a</p> <p>2 characterization that because there are 54</p> <p>3 percent victory that they should only have 54</p> <p>4 percent elected people. That just doesn't ring</p> <p>5 true in my mind.</p> <p>6 Q. That wasn't my question, sir.</p> <p>7 I was just asking you right now in</p> <p>8 Washington, DC, 10 out of 13 congressional seats</p> <p>9 are represented by Republicans, right?</p> <p>10 A. In North Carolina.</p> <p>11 Q. Right. So in Washington, DC, 76.9 percent of</p> <p>12 the congress people are currently Republicans;</p> <p>13 is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay.</p> <p>16 MS. RIGGS: Can we take a break now and</p> <p>17 do a brief conference.</p> <p>18 MR. STRACH: I was hoping you would say</p> <p>19 you're about done.</p> <p>20 MS. RIGGS: I'm about done.</p> <p>21 THE VIDEOGRAPHER: Off the record at</p> <p>22 4:51 p.m.</p> <p>23 (Brief Recess.)</p> <p>24 THE VIDEOGRAPHER: On record at</p> <p>25 5:03 p.m.</p> <p style="text-align: right;">235</p>
<p>1 A. I've never looked at it.</p> <p>2 Q. Okay. Republicans control 10 out of the 13</p> <p>3 districts, right?</p> <p>4 MR. STRACH: Objection to form.</p> <p>5 THE WITNESS: At this point.</p> <p>6 BY MS. RIGGS:</p> <p>7 Q. Do you know what percentage that equals out to?</p> <p>8 A. 10 of 13?</p> <p>9 Q. Yes.</p> <p>10 A. Not offhand.</p> <p>11 Q. If I hand you a calculator --</p> <p>12 A. You calculate.</p> <p>13 Q. No. You're the witness. That's the rules.</p> <p>14 Tell me what 10 divided by 13 is.</p> <p>15 A. I have to turn it on first. There it is. 76.</p> <p>16 Q. Is it 76.9 percent?</p> <p>17 A. Uh-huh.</p> <p>18 Q. So Republicans now constitute 76.9 percent of</p> <p>19 the North Carolina's congressional delegation,</p> <p>20 right?</p> <p>21 A. You can't compare it on a statewide election.</p> <p>22 They're not statewide candidates. They're</p> <p>23 district candidates and they represent</p> <p>24 geographical areas different. As each of those</p> <p>25 districts are, they represent different</p> <p style="text-align: right;">234</p>	<p>1 BY MS. RIGGS:</p> <p>2 Q. Thank you for your patience, Senator Rucho. I'm</p> <p>3 almost done here.</p> <p>4 One question I forgot to ask you is:</p> <p>5 After you left the second meeting with</p> <p>6 Dr. Hofeller with the map that you were</p> <p>7 decided -- that you and Representative Lewis had</p> <p>8 decided on but before the committee met, the</p> <p>9 Joint Committee met, did you give that map to</p> <p>10 anyone else in the legislature?</p> <p>11 A. I did not walk away with a map.</p> <p>12 Q. Okay. Did you authorize Dr. Hofeller to give it</p> <p>13 to anyone else?</p> <p>14 A. No, ma'am. His responsibility was to get and</p> <p>15 put it on the state computer.</p> <p>16 Q. So as far as you know, Senator Berger, for</p> <p>17 example, didn't have a copy of that before you</p> <p>18 made it public on the website?</p> <p>19 A. I -- as far as I know, absolutely not.</p> <p>20 Q. And the same with any other senator?</p> <p>21 A. (Witness shaking head from side to side.)</p> <p>22 Q. Answer verbally.</p> <p>23 A. Yes. To my knowledge, none of them had a copy</p> <p>24 of that map.</p> <p>25 Q. Okay. And you didn't let the Senate Republican</p> <p style="text-align: right;">236</p>

<p>1 caucus know anything about the map that you</p> <p>2 decided before that committee meeting?</p> <p>3 A. I don't believe -- I don't believe we had a time</p> <p>4 of a caucus prior to the -- I don't believe that</p> <p>5 we had prior to the Joint Committee where we</p> <p>6 took up the issue of criteria.</p> <p>7 Q. You didn't send them any e-mails?</p> <p>8 A. No.</p> <p>9 Q. Okay. I have no further questions.</p> <p>10 MR. STRACH: Any other questions?</p> <p>11 We have no questions. Thank you.</p> <p>12 THE VIDEOGRAPHER: This concludes the</p> <p>13 deposition. The time is 5:05 p.m.</p> <p>14 [SIGNATURE RESERVED]</p> <p>15 [DEPOSITION CONCLUDED AT 5:05 P.M.]</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">237</p>	<p>1 ERRATA SHEET</p> <p>2 Case Name: Common Cause v Rucho / LWV NC v Rucho</p> <p>3 Witness Name: ROBERT A. RUCHO</p> <p>4 Deposition Date: Wednesday, January 25, 2017</p> <p>5</p> <table border="1"> <thead> <tr> <th>6 Page/Line</th> <th>Reads</th> <th>Should Read</th> </tr> </thead> <tbody> <tr><td>7 / /</td><td></td><td></td></tr> <tr><td>8 / /</td><td></td><td></td></tr> <tr><td>9 / /</td><td></td><td></td></tr> <tr><td>10 / /</td><td></td><td></td></tr> <tr><td>11 / /</td><td></td><td></td></tr> <tr><td>12 / /</td><td></td><td></td></tr> <tr><td>13 / /</td><td></td><td></td></tr> <tr><td>14 / /</td><td></td><td></td></tr> <tr><td>15 / /</td><td></td><td></td></tr> <tr><td>16 / /</td><td></td><td></td></tr> <tr><td>17 / /</td><td></td><td></td></tr> <tr><td>18 / /</td><td></td><td></td></tr> <tr><td>19 / /</td><td></td><td></td></tr> <tr><td>20 / /</td><td></td><td></td></tr> <tr><td>21 / /</td><td></td><td></td></tr> <tr><td>22 / /</td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr> <td>25 Signature</td> <td>Date</td> <td></td> </tr> </tbody> </table> <p style="text-align: right;">239</p>	6 Page/Line	Reads	Should Read	7 / /			8 / /			9 / /			10 / /			11 / /			12 / /			13 / /			14 / /			15 / /			16 / /			17 / /			18 / /			19 / /			20 / /			21 / /			22 / /			23			24			25 Signature	Date	
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<p>1 ACKNOWLEDGEMENT OF DEPONENT</p> <p>2</p> <p>3 I, ROBERT A. RUCHO, declare under the penalties of</p> <p>4 perjury under the State of North Carolina that I have read</p> <p>5 the foregoing pages, which contain a correct transcription</p> <p>6 of answers made by me to the questions therein recorded,</p> <p>7 with the exception(s) and/or addition(s) reflected on the</p> <p>8 correction sheet attached hereto, if any.</p> <p>9 Signed this the day of , 2017.</p> <p>10</p> <p>11</p> <p style="text-align: center;">ROBERT A. RUCHO</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">238</p>	<p>1 STATE OF NORTH CAROLINA)</p> <p>2) CERTIFICATE</p> <p>3 COUNTY OF WAKE)</p> <p>4</p> <p>5 I, DENISE MYERS BYRD, Court Reporter and Notary</p> <p>6 Public, the officer before whom the foregoing proceeding was</p> <p>7 conducted, do hereby certify that the witness(es) whose</p> <p>8 testimony appears in the foregoing proceeding were duly</p> <p>9 sworn by me; that the testimony of said witness(es) were</p> <p>10 taken by me to the best of my ability and thereafter</p> <p>11 transcribed under my supervision; and that the foregoing</p> <p>12 pages, inclusive, constitute a true and accurate</p> <p>13 transcription of the testimony of the witness(es).</p> <p>14 I do further certify that I am neither counsel for,</p> <p>15 related to, nor employed by any of the parties to this</p> <p>16 action, and further, that I am not a relative or employee of</p> <p>17 any attorney or counsel employed by the parties thereof, nor</p> <p>18 financially or otherwise interested in the outcome of said</p> <p>19 action.</p> <p>20 This the 16th day of February 2017.</p> <p>21</p> <p>22</p> <p>23</p> <p style="text-align: right;">Denise Myers Byrd</p> <p style="text-align: right;">CSR 8340, RPR, CLR 102409-02</p> <p>24</p> <p>25</p> <p style="text-align: right;">240</p>																																																												

Exhibit K

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, *et al.*,)
)
Plaintiffs,)
)
v.)
)
ROBERT A. RUCHO, in his official)
capacity as Chairman of the North)
Carolina Senate Redistricting Committee)
for the 2016 Extra Session and Co-)
Chairman of the Joint Select Committee)
on Congressional Redistricting, *et al.*,)
)
Defendants.)

Civil Action No. 1:16-CV-1026-WO-JEP

Three-Judge Court

League of Women Voters of North)
Carolina, *et al.*,)
)
Plaintiffs,)
)
v.)
)
Robert A. Rucho, in his official capacity)
as Chairman of the North Carolina)
Senate Redistricting Committee for the)
2016 Extra Session and Co-Chairman of)
the Joint Select Committee on)
Congressional Redistricting, *et al.*,)
)
Defendants.)

Civil Action No. 1:16-CV-1164-WO-JEP

Three-Judge Panel

**DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR
ADMISSION**

Defendants, by and through undersigned counsel, serve their objections and responses to Plaintiffs' First Set of Requests for Admissions:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs' First Requests for Admission ("Requests"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Request should not be taken as an admission that

Defendants accept or admit the existence of any facts assumed by such Request or that such response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants responds to part of or all of any Request is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Request.

Defendants will respond to Plaintiff's Requests for Admission in accordance with Rule 36 of the Federal Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules.

These responses are provided solely for the purpose of and in relation to this action.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

1. Attached Exhibit 1 is a true and accurate copy of the redistricting legislation enacted by the General Assembly on February 19, 2016.

Response: Admitted.

2. Attached Exhibit 2 is a true and accurate copy of the map created by the legislation contained in Exhibit 1.

Response: Admitted.

3. Attached Exhibit 3 is a true and accurate copy of the congressional map adopted by the Joint Select Committee on Congressional Redistricting (JCCR) on February 17, 2016.

Response: Admitted.

4. Attached Exhibit 4 is a true and accurate copy of the transcript of a public hearing convened by the JCCR on February 15, 2016. That transcript accurately and fully reflects the February 15 public hearing.

Response: Admitted.

5. Attached Exhibit 5 is a true and accurate copy of the transcript of the February 16, 2016 meeting of the JCCR. That transcript accurately and fully reflects the February 16 JCCR meeting.

Response: Admitted.

6. Attached Exhibit 6 is a true and accurate copy of the February 17, 2016 meeting of the JCCR. That transcript accurately and fully reflects the February 17 JCCR meeting.

Response: Admitted.

7. Attached Exhibit 7 is a true and accurate copy of the transcript of the February 18, 2016 meeting of the Senate Redistricting Committee. That transcript accurately and fully reflects the February 18 Senate committee meeting.

Response: Admitted.

8. Attached Exhibit 8 is a true and accurate copy of the transcript of the February 19, 2016 meeting of the Senate Redistricting Committee. That transcript accurately and fully reflects the February 19 Senate committee meeting.

Response: Admitted.

9. Attached Exhibit 9 is a true and accurate copy of the transcript of the February 18, 2016 Floor Session of the Senate. That transcript accurately and fully reflects the February 18 Senate Floor Session.

Response: Admitted.

10. Attached Exhibit 10 is a true and accurate copy of the transcript of the February 19, 2016 Floor Session of the Senate. That transcript accurately and fully reflects the February 19 Senate Floor Session.

Response: Admitted.

11. Attached Exhibit 11 is a true and accurate copy of the transcript of the February 18, 2016 House Redistricting Committee. That transcript accurately and fully reflects the February 18 House committee meeting.

Response: Admitted.

12. Attached Exhibit 12 is a true and accurate copy of the transcript of the February 19, 2016 House Redistricting Committee. That transcript accurately and fully reflects the February 19 House committee meeting.

Response: Admitted.

13. Attached Exhibit 13 is a true and accurate copy of the transcript of the February 18, 2016 Floor Session of the House. That transcript accurately and fully reflects the February 18 House Floor Session.

Response: Admitted.

14. Attached Exhibit 14 is a true and accurate copy of the transcript of the February 19, 2016 Floor Session of the House. That transcript accurately and fully reflects the February 19 House Floor Session.

Response: Admitted.

15. Attached Exhibit 15 contains true and accurate copies of entries on a website maintained by the defendant North Carolina State Board of Elections that accurately report the results of the 2016 election in each congressional district (1-13) by county.

Response: Admitted.

16. Attached Exhibit 16 is a true and accurate copy of criteria adopted by the JCCR on February 16, 2016.

Response: Admitted.

17. A true and accurate copy of the election results contained on the General Assembly's website and loaded on Dr. Hofeller's personal computer is contained in the attached Exhibit 17.

Response: Admitted.

18. The formula Dr. Hofeller used to evaluate the partisan performance of congressional districts he was drawing is attached as Exhibit 18. (This formula includes the results of seven statewide elections: the 2008 elections for US Senate, Governor and Commissioner of Insurance, the 2010 election for US Senate, the 2012 elections for Governor and Commissioner of Labor and the 2014 election for US Senate.)

Response: Defendants admit that Dr. Hofeller used the formula in Exhibit 18 that included the results of the statewide elections listed above to evaluate the political characteristics of the congressional districts he drew. In all other respects, this Request is denied.

19. The terms on which Dr. Hofeller was retained to develop the 2016 Congressional Redistricting Plan are accurately and fully described in the attached Exhibit 19.

Response: Admitted.

20. The maps attached as Exhibit 20 (and contained in Exhibit 31 to the Hofeller deposition) are the only maps drawn by Hofeller in carrying out his work for Rucho and Lewis in February 2016, other than the maps in attached Exhibits 2 and 3.

Response: Admitted.

21. The documents Thomas Farr provided plaintiff's counsel by email on February 14, 2017 are the only non-privileged documents relating to the 2016 Congressional Redistricting Plan on Hofeller's computer. A true and accurate copy of those documents is contained in attached Exhibit 21.

Response: Defendants admit that email exchanges between counsel and defendants' discovery responses state that all non-privileged, relevant documents from Dr. Hofeller's computer have been produced. In all other respects, this Request is denied.

22. Attached Exhibit 22 (which contains exhibits 6, 6a, 9, 10, 13, 21, 22, and 23 from Hofeller's deposition in this matter) are true and accurate copies of business records of the Republican State Leadership Committee (RSLC).

Response: Defendants admit that Exhibit 22 contains copies of certain documents produced by the Republican State Leadership Committee in response to a subpoena from Plaintiffs, however, Defendants cannot admit or deny whether records that they did not create and maintain are "business records" within the meaning of this Request.

23. One or more plaintiffs has standing to challenge the constitutionality of the 2016 Congressional Redistricting Plan as a whole.

Response: Denied.

24. One or more of the individual plaintiffs in *Common Cause v. Rucho*, 1:16-CV-1026-WO-JEP, has standing to challenge the constitutionality of each congressional district (1-13) contained in the 2016 Congressional Redistricting Plan.

Response: Denied.

25. No Democratic member of the General Assembly voted for the legislation relating to the 2016 Congressional Redistricting Plan in any committee or on the floor of the Senate or House.

Response: Admitted.

26. No Republican member voted against the legislation relating to the 2016 Congressional Redistricting Plan in any committee or on the floor of the Senate or the House.

Response: Denied.

27. Representative David Lewis and Senator Robert Rucho were appointed Chairs of the House and Senate Redistricting Committees and charged with redrawing the 2011 Congressional Redistricting Plan declared unconstitutional on February 5, 2016.

Response: Defendants admit that Representative David Lewis and Senator Robert Rucho were appointed Chairs of the House and Senate Redistricting Committees and that those committees were charged with redrawing the 2011 Congressional Redistricting Plan in accordance with the *Harris* court's February 5, 2016 order. In all other respects, this Request is denied.

Exhibit L

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE)
BOWSER, and SAMUEL LOVE,) Greensboro, North Carolina
) October 14, 2015
Plaintiff,) 9:06 a.m.
)
vs.)
)
PATRICK MCCRORY, in his)
capacity as Governor of North) Case No. 1:13CV949
Carolina, NORTH CAROLINA STATE)
BOARD OF ELECTIONS, and JOSHUA)
HOWARD, in his capacity as)
Chairman of the North Carolina)
State Board of Elections,)
)
Defendants.)

TRANSCRIPT OF BENCH TRIAL VOLUME II OF III HELD BEFORE
THE HON. **WILLIAM L. OSTEEN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **MAX O. COGBURN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **ROGER L. GREGORY**, UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: **KEVIN J. HAMILTON**
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For the Defendant: **THOMAS A. FARR**
PHILLIP JOHN STRACH
Ogletree Deakins Nash Smoak & Stewart
POB 31608
Raleigh, NC 27622

1 my opinion, as were many other people, and one of the things I
2 did was to look at how these different elections track one
3 another.

4 The other thing I might add, too, is that I didn't
5 draw this plan in a vacuum as far as the data was concerned.
6 First of all, I've drawn numerous plans in the state of North
7 Carolina over decades. I drew the State Senate districts and
8 the State House districts, and I know from that experience that
9 the underlying political nature of the precincts in the state
10 does not change no matter what race you use to analyze it.

11 The only way the underlying political demographics,
12 if you could use that term, change in a precinct is if the
13 precinct is changed in the nature of the people that are living
14 in the precinct. So once a precinct is found to be a strong
15 Democratic precinct, it's probably going to act as a strong
16 Democratic precinct in every subsequent election. The same
17 would be true for Republican precincts.

18 So if you used a conglomeration of elections, my
19 experience is you'd come up with the same -- the same result.
20 You may find a little higher score for the Democrats overall in
21 one election because the candidate did better, or you might
22 find a lower one, but the general ranking of the precincts as
23 to how Republican or how Democratic they are is simply not
24 going to change.

25 Q All right. Now, and to clarify again, when you were

Exhibit M



**NORTH CAROLINA GENERAL ASSEMBLY
JOINT SELECT COMMITTEE ON CONGRESSIONAL REDISTRICTING**

February 16, 2016

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. Earlier today, a motion prevailed in the meeting of the Joint Select Committee on Congressional Redistricting (the "Committee") authorizing the Co-Chairs to engage a map drawing expert to produce a contingent Congressional Map or Maps using the attached criteria prevailing today on individual motions in the Committee (the "Adopted Criteria"). Based on your knowledge and experience, we believe you are best qualified to produce such a map or maps. Therefore, we offer to engage you to produce such a map for possible presentation to the Committee and ultimate use by the General Assembly.


OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 13 congressional districts in North Carolina that complies with the Adopted Criteria. The map you produce may be presented to the Committee, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committee, these protections will accrue to the benefit of the Co-Chairs of the Committee, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$25,000.00 payable upon

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committee's directive.

Sincerely,


Rep. David Lewis


Sen. Bob Rucho

Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: February 16, 2016

Agreement Authorized and Approved:

Sen. Phil Berger
President Pro Tempore

Rep. Tim Moore
Speaker

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**[PROPOSED] ORDER ON
PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION**

The Court, having considered the Plaintiffs' Motion for a Preliminary Injunction hereby
GRANTS the motion and ORDERS as follows:

1. Legislative Defendants and State Defendants, and their respective agents, officers, and employees, are preliminarily enjoined from preparing for or administering the 2020 primary and general U.S. House elections using the 2016 Plan;
2. The Court will afford the General Assembly two weeks from the date of this Order, namely through November ____, 2019, to enact a remedial congressional map for the 2020 primary and general elections (hereinafter, the "Remedial Map") in conformity with this Order.
3. Except as otherwise noted in this Order, the following criteria shall exclusively govern the drawing of the Remedial Map:

- a. Equal Population: The mapmakers shall use the 2010 federal decennial census data as the sole basis of population for the establishment of districts in the Remedial Map. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
- b. Contiguity: Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- c. Compactness and the Division of Counties and VTDs: The mapmakers shall make reasonable efforts to construct districts in the Remedial Map that improve the compactness of the districts in place prior to the 2016 Plan and that keep more counties and VTDs whole as compared to the districts in place prior to the 2016 Plan. Division of counties shall only be made for reasons of equalizing population. Reasonable efforts shall be made not to divide a county into more than two districts.
- d. Incumbency: Candidates for Congress are not required by law to reside in a district they seek to represent. However, reasonable efforts may be made to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts constructed in the Remedial Map.

4. In redrawing the relevant districts in the Remedial Map, neither the invalidated 2011 districts nor the invalidated 2016 districts may be used as starting points for drawing new districts, and no effort may be made to preserve the cores of invalidated 2011 or 2016 districts.
5. Legislative Defendants and their agents shall conduct the entire remedial process in full public view. At a minimum, this requires all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers. Legislative Defendants and their agents shall not undertake any steps to draw or revise the new districts outside of public view. Legislative Defendants shall ensure that equivalency files for all proposed maps and amendments are publicly posted to a General Assembly website in a timely manner.
6. To the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.
7. Notwithstanding the General Assembly having the opportunity to draw the Remedial Map in the first instance, the Court, by subsequent Court Order, shall promptly appoint a Referee to (1) assist the Court in reviewing any Remedial Map enacted by the General Assembly; and (2) to develop a remedial map for the

Court should the General Assembly fail to enact a lawful Remedial Map within the time allowed.

8. No later than November ___, 2019, the parties may submit to the Court names and qualifications of suggested referees. The Court will thereafter appoint a referee by subsequent Court Order.
9. The Court orders that the remedial process will commence immediately upon entry of this Order.
10. The Court, on its own motion, denies a stay of the remedial process pending appeal.
11. The Court retains jurisdiction to move the primary date for the U.S. House elections, or all of the State's 2020 primaries, including for offices other than the U.S. House, should doing so become necessary to provide effective relief in this case.

So ORDERED this ____ day of _____, 2019.

The Honorable Paul C. Ridgeway
Superior Court Judge

The Honorable _____
Superior Court Judge

The Honorable _____
Superior Court Judge

October 4, 2019

The Honorable Paul Ridgeway
Senior Resident Judge
Wake County Justice Center
300 S. Salisbury Street
Raleigh, NC 27602

The Honorable Alma L. Hinton
Senior Resident Judge
Halifax County Courthouse
357 Ferrell Lane
Halifax, NC 27839

The Honorable Joseph N. Crosswhite
Senior Resident Judge
Hall of Justice
226 Stockton Street
Statesville, NC 28677

Re: *Harper v. Lewis*, No. 19-cvs-12667

Dear Judges Ridgeway, Hinton, and Crosswhite:

On behalf of Plaintiffs in *Harper v. Lewis*, we write to request that the Court rule on Plaintiffs' motion to expedite Plaintiffs' preliminary injunction motion without waiting for a lawyer to notice an appearance on behalf of Legislative Defendants. As of this filing, no lawyer has noticed an appearance on behalf of Legislative Defendants in this case, even though the Verified Complaint and Summonses were served on Legislative Defendants on September 30, 2019, and even though Plaintiffs filed their motion for a preliminary injunction and motion to expedite on September 30 as well. Those motions were served on Legislative Defendants via mail and also emailed to the lawyers at Ogletree Deakins who have long represented Legislative Defendants in redistricting matters.

Based on Legislative Defendants' actions thus far and their prior attempts to avoid judicial review of their redistricting plans through delay tactics, we believe Legislative

October 4, 2019

Page 2

Defendants are seeking to run out the clock by having their counsel delay filing an appearance. Per the attached email exchanges, on the day the complaint was filed, Plaintiffs' counsel emailed Mr. Strach and Mr. Farr asking whether they would accept service on behalf of Legislative Defendants via email. Three days later, Mr. Strach responded: "We are not authorized to accept service of the Verified Complaint and Summonses at this time." Plaintiffs' counsel then notified Mr. Strach and Mr. Farr that Legislative Defendants had been served via UPS, and asked whether Ogletree Deakins would be representing Legislative Defendants in this case and would accept email service moving forward. They did not respond. Plaintiffs' counsel followed up several days later asking the same questions, and Mr. Strach responded that Ogletree Deakins purportedly has not been retained to represent Legislative Defendants in this case "as of today," *i.e.*, October 3, but would let Plaintiffs' counsel know "if that changes."

Thus, to date, no information has been provided about who is representing Legislative Defendants in this case. We are concerned that Legislative Defendants will not enter an appearance of counsel unless ordered to respond to Plaintiffs' preliminary injunction motion.

For these reasons, we respectfully request that the Court issue a decision on the motion to expedite and order Legislative Defendants to respond to the preliminary injunction motion by Monday, October 14, which is two weeks after they received it. While Legislative Defendants surely learn of all filings in this matter in real time from Mr. Strach and Mr. Farr (who have received all of the filings via email), as well as through the local and national media coverage, we request that any orders issued by the Court, including an order setting a briefing schedule for Plaintiffs' preliminary injunction motion, be served on Legislative Defendants by U.S. Mail.

Lastly, we note that the State Board of Elections' submission today in *Common Cause v. Lewis* seems to indicate that, if the deadline for mailing absentee ballots is moved back five days to January 18, 2020 (which the State Board or the Court has discretion to do under state law), the State Board would not need to receive the shapefile for a remedial redistricting plan until December 15, 2019—rather than the earlier date noted in Plaintiffs' motion to expedite.

We appreciate the Court's attention to this matter.

Sincerely,

/s/ R. Stanton Jones
R. Stanton Jones

EXHIBIT A

Jacobson, Daniel

From: Strach, Phillip J. <phil.strach@ogletree.com>
Sent: Thursday, October 3, 2019 7:36 PM
To: Jones, Stanton; Farr, Thomas A.
Cc: Burton Craige; Narendra Ghosh; Paul Smith; MElias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel
Subject: RE: Harper et al. v. Lewis et al., Case No. 19-cvs-12667

External E-mail

Stanton: as of today we have not been asked to represent the legislative defendants in this case but if that changes we will let you know promptly. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Thursday, October 03, 2019 5:16 PM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Farr, Thomas A. <thomas.farr@ogletreedeakins.com>
Cc: Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; MElias@perkinscoie.com; AKhanna@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Subject: RE: Harper et al. v. Lewis et al., Case No. 19-cvs-12667

Phil: I have received no response to my email below. Are you representing the legislative defendants in this case? If not, do you know who is?

Regards,
Stanton

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Monday, September 30, 2019 11:49 AM
To: Strach, Phillip J. <phil.strach@ogletree.com>; Farr, Thomas A. <thomas.farr@ogletreedeakins.com>
Cc: Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; MElias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Subject: RE: Harper et al. v. Lewis et al., Case No. 19-cvs-12667

Phil:
The Legislative Defendants were served via UPS this morning. Going forward, will you be representing the Legislative Defendants in this case and will you accept email service of Plaintiffs' further court submissions?

Regards,
Stanton

From: Strach, Phillip J. <phil.strach@ogletree.com>
Sent: Monday, September 30, 2019 11:41 AM
To: Narendra Ghosh <nghosh@pathlaw.com>; Farr, Thomas A. <thomas.farr@ogletreedeakins.com>
Cc: Burton Craige <bcraige@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; MElias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>
Subject: RE: Harper et al. v. Lewis et al., Case No. 19-cvs-12667

External E-mail

Hi Narendra:

We are not authorized to accept service of the Verified Complaint and Summonses at this time.

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Narendra Ghosh <nghosh@pathlaw.com>
Sent: Friday, September 27, 2019 5:21 PM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Farr, Thomas A. <thomas.farr@ogletreedeakins.com>
Cc: Burton Craige <bcraige@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; MElias@perkinscoie.com; AKhanna@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>
Subject: Re: Harper et al. v. Lewis et al., Case No. 19-cvs-12667

Mr. Strach, Mr. Farr,

We understand you represent the Legislative Defendants in this case. Attached are the Verified Complaint and Summonses for these Defendants.

Can you let us know if you accept service of these materials on behalf of the Legislative Defendants via email? If so, please confirm your acceptance of service on the attached summonses in the return of service section. If you'd like us to send hard copies of anything, let us know.

Thanks,
Narendra

Narendra K. Ghosh
Patterson Harkavy LLP
100 Europa Dr., Ste. 420
Chapel Hill, NC 27517

(919) 942-5200
(866) 397-8671 fax
www.pathlaw.com

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From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Friday, September 27, 2019 12:15 PM
To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; MElias@perkinscoie.com <MElias@perkinscoie.com>; AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Cox, Paul <pcox@ncdoj.gov>; amajmundar@ncdoj.gov <amajmundar@ncdoj.gov>; sbrennan@ncdoj.gov <sbrennan@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Farr, Thomas A. <thomas.farr@ogletreedeakins.com>
Subject: Harper et al. v. Lewis et al., Case No. 19-cvs-12667 -- complaint and letter to Judge Ridgeway

Dear Ms. Myers:

Attached please find a Verified Complaint we filed this morning in the clerk's office. The case has been assigned No. 19-cvs-12667. I've also attached a letter to Judge Ridgeway requesting expeditious appointment of a three-judge panel pursuant to N.C. Gen. Stat. 1-267.1(a). The letter and complaint will be delivered to Judge Ridgeway today as well.

Please let me know any questions. Thank you for your attention to this matter.

Best regards,
Stanton

Stanton Jones
Partner

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5563
Stanton.Jones@arnoldporter.com | www.arnoldporter.com

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

FILED IN THE GENERAL COURT OF JUSTICE
2019 OCT -1 AM 10:34 SUPERIOR COURT DIVISION
19 CVS 12667
WAKE COUNTY, N.C.

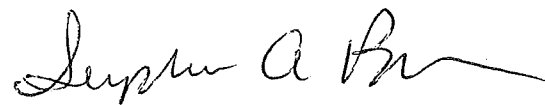
BY

NOTICE OF
APPEARANCE

PLEASE TAKE NOTICE that Stephanie A. Brennan, Special Deputy Attorney General, enters her Notice of Appearance on behalf of Defendants the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Kenneth Raymond, Jeff Carmon, and David C. Black. By this Notice of Appearance, the undersigned requests that she receive all notices from the Court and all papers served by the parties hereto.

This the 1st day of October, 2019.

JOSHUA H. STEIN
Attorney General



Stephanie A. Brennan
Special Deputy Attorney General
State Bar No. 35955

North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Email: sbrennan@ncdoj.gov
Tele No.: (919) 716-6920
Fax No.: (919) 716-6763

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing NOTICE OF APPEARANCE in the above-titled action upon all parties to this cause by depositing a copy in the United States Mail, postage prepaid to:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

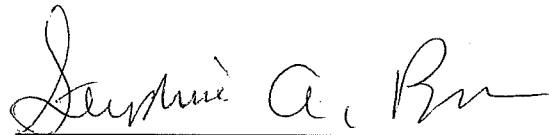
R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
William C. Perdue
Sara Murphy D'Amico
Graham W. White
ARNOLD AND PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
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stanton.jones@arnoldporter.com

Marc E. Elias
Aria C. Branch
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Washington DC 20005-3960
melias@perkinscoie.com

Abha Khanna
PERKINS COIE LLP
1201 Third Ave., Suite 4900
Seattle WA 98101-3099
akhanna@perkinscoie.com

Counsel for Plaintiffs

This the 1st day of October, 2019.



Stephanie A. Brennan
Special Deputy Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE


REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

FILED
2019 OCT -1 AM 10:34
WAKE COUNTY, C.S.C.
BY 

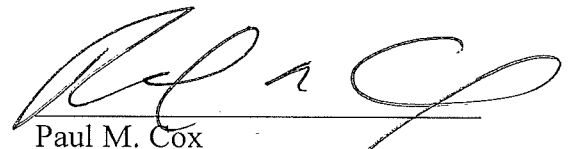
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 12667

NOTICE OF
APPEARANCE

PLEASE TAKE NOTICE that Paul M. Cox, Special Deputy Attorney General, enters his Notice of Appearance on behalf of Defendants the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Kenneth Raymond, Jeff Carmon, and David C. Black. By this Notice of Appearance, the undersigned requests that he receive all notices from the Court and all papers served by the parties hereto.

This the 1st day of October, 2019.

JOSHUA H. STEIN
Attorney General



Paul M. Cox
Special Deputy Attorney General
N.C. State Bar No. 49146
Email: pc Cox@ncdoj.gov

North Carolina Dept. of Justice
Post Office Box 629
Raleigh, N.C. 27602
Tele No.: (919) 716-6900
Fax No.: (919) 716-6763

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing NOTICE OF APPEARANCE in the above-titled action upon all parties to this cause by depositing a copy in the United States Mail, postage prepaid to:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

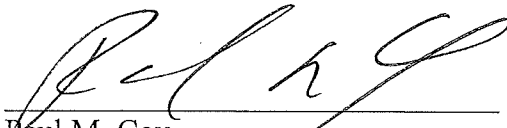
R. Stanton Jones
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William C. Perdue
Sara Murphy D'Amico
Graham W. White
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KAYE SCHOLER LLP
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1201 Third Ave., Suite 4900
Seattle WA 98101-3099
akhanna@perkinscoie.com

Counsel for Plaintiffs

This the 1st day of October, 2019.



Paul M. Cox
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2019 OCT - 19 CMS: 12667

WAKE COUNTY, C.S.C.

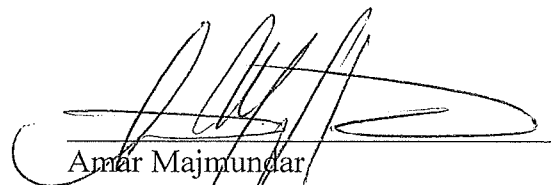
BY 

NOTICE OF
APPEARANCE

PLEASE TAKE NOTICE that Amar Majmudar, Senior Deputy Attorney General, enters his Notice of Appearance on behalf of Defendants the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Kenneth Raymond, Jeff Carmon, and David C. Black. By this Notice of Appearance, the undersigned requests that he receive all notices from the Court and all papers served by the parties hereto.

This the 1st day of October, 2019.

JOSHUA H. STEIN
Attorney General


Amar Majmudar
Senior Deputy Attorney General
State Bar No. 24668

North Carolina Dept. of Justice
Post Office Box 629
Raleigh, N.C. 27602
Email: amajmudar@ncdoj.gov
Tele No.: (919)-716-6821
Fax No.: (919)-716-6763

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing NOTICE OF APPEARANCE in the above-titled action upon all parties to this cause by depositing a copy in the United States Mail, postage prepaid to:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

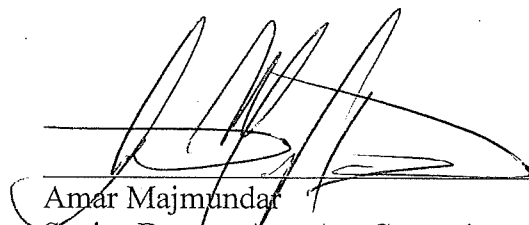
R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
William C. Perdue
Sara Murphy D'Amico
Graham W. White
ARNOLD AND PORTER
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Aria C. Branch
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melias@perkinscoie.com

Abha Khanna
PERKINS COIE LLP
1201 Third Ave., Suite 4900
Seattle WA 98101-3099
akhanna@perkinscoie.com

Counsel for Plaintiffs

This the 1st day of October, 2019.


Amar Majmundar
Senior Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Case No. 19 CVS 12667

2019 OCT -7 P 2:25

REBECCA HARPER, *et al.*

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, *et al.*

Defendants.

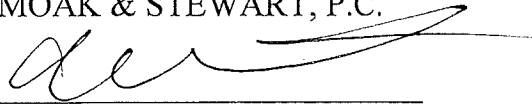
WAKE CO., C.S.C.
BY RSP

NOTICE OF APPEARANCE

Alyssa M. Riggins of the law firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C. enters her Notice of Appearance as counsel on behalf Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Representative David R. Lewis, in his official capacity as Senior Chair of the House Standing Committee on Redistricting, Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting, Warren Daniel in his Official Capacity as Co-Chair of the Senate Standing Committee on Redistricting, Paul Newton in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting ("Legislative Defendants"). Ms. Riggins is a member in good standing with the bar of the state of North Carolina.

Respectfully submitted this 7th day of October, 2019.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.



Alyssa M. Riggins
N.C. State Bar No. 52366
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Attorneys for Legislative Defendants

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure:

Burton Craige,
Narendra K. Ghosh
Paul E. Smith
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200

Counsel for Plaintiffs

Paul Cox
Stephanie Brennan
North Carolina Department of
Justice
114 W. Edenton St
Raleigh, NC 27603
(919) 716-6932
pcox@ncdoj.gov

*Counsel for the State Board of
Elections*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
601 Massachusetts Ave. NW
Washington, DC 20001-3761
(202) 942-5000
Stanton.jones@arnoldporter.Com

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700 13th Street NW
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(202) 654-6200
melias@perkinscoie.com

Abha Khanna
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Counsel for Plaintiffs

This, the 7th day of October, 2019

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.



Alyssa M. Riggins
N.C. State Bar No. 52366
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Attorneys for Legislative Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2019 OCT 7 10 25
Case No. 19CVS 12667

REBECCA HARPER, *et al.*

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, *et al.*

Defendants.

) WAKE CO., C.S.C.

) BY RHP

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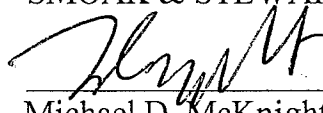
)

NOTICE OF APPEARANCE

Michael D. McKnight of the law firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C. enters his Notice of Appearance as counsel on behalf Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Representative David R. Lewis, in his official capacity as Senior Chair of the House Standing Committee on Redistricting, Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting, Warren Daniel in his Official Capacity as Co-Chair of the Senate Standing Committee on Redistricting, Paul Newton in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting ("Legislative Defendants"). Mr. McKnight is a member in good standing with the bar of the state of North Carolina.

Respectfully submitted this 7th day of October, 2019.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.



Michael D. McKnight

N.C. State Bar No. 36932

4208 Six Forks Road, Suite 1100

Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

Attorneys for Legislative Defendants

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure:

Burton Craige,
Narendra K. Ghosh
Paul E. Smith
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200

Counsel for Plaintiffs

Paul Cox
Stephanie Brennan
North Carolina Department of
Justice
114 W. Edenton St
Raleigh, NC 27603
(919) 716-6932
pcox@ncdoj.gov

*Counsel for the State Board of
Elections*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
601 Massachusetts Ave. NW
Washington, DC 20001-3761
(202) 942-5000
Stanton.jones@arnoldporter.Com

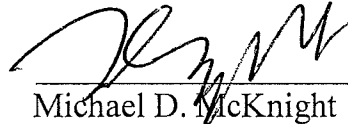
Marc E. Elias
Aria C. Branch
700 13th Street NW
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(202) 654-6200
melias@perkinscoie.com

Abha Khanna
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Counsel for Plaintiffs

This, the 7th day of October, 2019

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.



Michael D. McKnight
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STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Case No. 19 CVS 12667

2019 OCT -7 P 2:24

REBECCA HARPER, *et al.*

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, *et al.*

Defendants.

WAKE CO.) C.S.C.

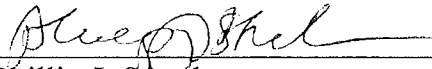
BY ROP

NOTICE OF APPEARANCE

Phillip J. Strach of the law firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C. enters his Notice of Appearance as counsel on behalf Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Representative David R. Lewis, in his official capacity as Senior Chair of the House Standing Committee on Redistricting, Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting, Warren Daniel in his Official Capacity as Co-Chair of the Senate Standing Committee on Redistricting, Paul Newton in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting ("Legislative Defendants"). Mr. Strach is a member in good standing with the bar of the state of North Carolina.

Respectfully submitted this 7th day of October, 2019.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

A handwritten signature in dark ink, appearing to read "Phillip J. Strach", written over a horizontal line.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure:

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19 CVS 12667

REBECCA HARPER, *et al.* WAKE CO., C.S.C.)

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, *et al.*)

Defendants.

NOTICE OF APPEARANCE

Thomas A. Farr of the law firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C. enters his Notice of Appearance as counsel on behalf Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Representative David R. Lewis, in his official capacity as Senior Chair of the House Standing Committee on Redistricting, Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting, Warren Daniel in his Official Capacity as Co-Chair of the Senate Standing Committee on Redistricting, Paul Newton in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting ("Legislative Defendants"). Mr. Farr is a member in good standing with the bar of the state of North Carolina.

Respectfully submitted this 7th day of October, 2019.

OGLETREE, DEAKINS, NASH
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure:

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS 012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT
COMMITTEE ON REDISTRICTING, *et*
al.,

Defendants.

MOTION TO INTERVENE

(Three-Judge Court Pursuant to
N.C. Gen. Stat § 1-267.1)

FILED
2019 OCT -9 PM 1:47
CLERK OF COURT
JAMES C. HARRIS

NOW COME Intervenor Applicants Ted Budd, Virginia Foxx, and Richard Hudson (collectively, “Intervenor Applicants”), and, pursuant to Rule 24 of the North Carolina Rules of Civil Procedure (the “Rules”), file this Motion to Intervene (“Motion”) as Defendants in the above-captioned case. In support of their Motion, Intervenor Applicants show the Court as follows:

INTRODUCTION

1. For more than a century the North Carolina General Assembly has taken political considerations, including incumbency protection and partisan advantage, into account in drawing congressional district lines, with North Carolina appellate courts traditionally upholding such considerations. *See, e.g., Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 390 (2002) (allowing Legislature to “consider partisan advantage” when redrawing maps, so long as it complies with the State Constitution’s Whole County Provisions, N.C. Const. Art. II, §§ 3(3), 5(3)). Now Plaintiffs—many of whom were also plaintiffs in *Common Cause v. Lewis*, 18-CVS-14001 (WAKE) represented by the same counsel—seek to extend their upheaval of North Carolina

redistricting law by bringing the exact same claims they raised in *Common Cause v. Lewis* regarding North Carolina's state legislative districts, now against the congressional maps, two and a half months before filing begins for the 2020 elections. They do so despite having been able to raise those claims since the maps were enacted, or at the very least in *Common Cause v. Lewis* almost year ago, when their proposed remedies would have caused less confusion and chaos for voters and candidates, who are now preparing for primary elections in these congressional districts within mere months, and less confusion and chaos for the Court and the Parties.

2. Plaintiffs are fourteen alleged Democratic voters, most of whom were Plaintiffs in *Common Cause v. Lewis*, 18-CVS-14001 (WAKE). They ask the Court to declare that North Carolina's 2016 congressional redistricting plan (N.C. Sess. Law 2016-1) (the "2016 Plan"), is invalid for the same reasons set forth in this Court's September 3, 2019 Order in *Common Cause v. Lewis*. Their principal complaint is that the Legislative Defendants consideration of partisan advantage in drafting the 2016 Plan purportedly made it an "extreme partisan gerrymander" that violates North Carolina's Free Elections Clause. As a result, Plaintiffs allege that their votes have been diluted through "packing" and "cracking," preventing them from electing the Democratic candidates of their choice. Plaintiffs here are not hiding their objective: they are using political arguments to advance a legal theory supporting a political goal.

3. Intervenor Applicants are incumbent representatives of North Carolina's 5th, 8th, and 13th congressional districts—all of which Plaintiffs challenge—who anticipate running to keep their seats in 2020. In their capacity as Representatives and candidates for office, they have invested significant time and resources interacting with and serving their constituents, fundraising, and electioneering, all in reliance on the current district configuration. Redrawing the state's Congressional Maps for the 2020 elections—barely over a year away—would be significantly

disruptive, costly, and would impair Intervenor Applicants' rights relating to both their current offices and their candidacies for the same.

4. Moreover, Intervenor Applicants are not only representatives of those congressional districts, but also residents and voters therein. As voters and residents of the congressional districts they represent, Intervenor Applicants believe that, to the extent any of the Plaintiffs have standing to raise their claims, Intervenor Applicants have the same purported rights, and that an award of the remedy Plaintiffs seek may impair Intervenor Applicants' rights. Therefore, Intervenor Applicants also seek to intervene in this case to protect their rights as residents and voters.

5. Additionally, Intervenor Applicants have a cognizable interest under Article I, Section 4 of the U.S. Constitution in ensuring that the direct grant of rights and responsibilities for their election to members of the State Legislature for drawing Congressional districts is fully and faithfully enforced and considered by this Court. *See Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000); *see also Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 135 S. Ct. 2652, 2677–2694 (Roberts, C.J., dissenting).

6. Plaintiffs' proposed relief—which would invalidate the 2016 Plans entirely and require all new districts—would impair the Intervenor Applicants' own interests as representatives and voters and harm the rights accorded to them through their state legislators under Article I, Section IV of the U.S. Constitution.

7. Plaintiffs can only vindicate their interest in enhanced representation by impairing Intervenor Applicants' own interests in the same, and can only accomplish this by injecting chaos into the political cycle by enjoining use of maps that have been used for two election cycles, including special elections merely a month ago. In short, if Plaintiffs' alleged enhanced rights

exist, Intervenor Applicants have those same rights, which may be impaired by the outcome of this case. And Intervenor Applicants have an even more personal stake in the outcome of this case, as they are elected Congressional Members currently representing, and campaigning to continue representing, the people in those same challenged districts.

8. As such, Intervenor Applicants have an interest in the outcome of this litigation, and their interests are not fully represented by the current Defendants, who are state actors that took part in the district map drawing process and are being sued only in their official capacities. Furthermore, as this lawsuit was filed just over a week ago and no Defendant has answered or otherwise pled in response to the Complaint, intervention is timely, allowing intervention will not prejudice the Parties, and intervention will benefit this Court through the evidence and legal argument that Intervenor Applicants can provide. Accordingly, pursuant to N.C. R. Civ. P. 24, Intervenor Applicants should be allowed to intervene as Defendants.

PARTIES

9. Plaintiffs are comprised of a group of fourteen (14) alleged Democratic voters. (Compl. ¶¶ 6–19). Each of the Plaintiffs contend that they (1) live and vote in certain North Carolina Congressional districts and (2) regularly vote for Democratic candidates for office, (*Id.*), and that their right to vote has been “diluted” by the purportedly unconstitutional congressional maps, making it less likely that their preferred candidates will win election, (*e.g., id.* ¶ 119, 127, 135, 141–42).

10. Intervenor Applicants are certain members of North Carolina’s congressional delegation who also vote and reside in the challenged districts and who regularly vote for Republican candidates for office.

11. Intervenor Applicant Rep. Virginia Foxx is the member of the United States House of Representatives for the NC-05 district. Rep. Foxx is a registered Republican who has consistently voted for Republican candidates for Congress.

12. Intervenor Applicant Rep. Richard Hudson is the member of the United States House of Representatives for the NC-08 district. Rep. Hudson is a registered Republican who has consistently voted for Republican candidates for Congress.

13. Intervenor Applicant Rep. Ted Budd is the member of the United States House of Representatives for the NC-13 district. Rep. Budd is a registered Republican who has consistently voted for Republican candidates for Congress.

14. Defendants are comprised of six state legislators, Representative David R. Lewis, Senator Ralph E. Hise, Jr., Senator Warren Daniel, Senator Paul Newton, Speaker Timothy K. Moore, and President *Pro Tempore* Philip E. Berger, sued in their legislative capacities (the “Legislative Defendants”); the North Carolina State Board of Elections; and the members of the North Carolina State Board of Elections (the State Board and its members are referred to herein as the “State Defendants”) (*Id.* ¶¶ 20–31). Defendants are sued in their official capacities only, and not in their individual capacities. (*Id.*).

PROCEDURAL HISTORY

15. On September 27, 2019, Plaintiffs filed their first Complaint. On September 30, 2019, Plaintiffs filed a Motion for Preliminary Injunction and a Motion for Expedited Briefing and Resolution of Plaintiffs’ Motion for Preliminary Injunction. On or about October 2, 2019, the Chief Justice assigned the three-judge panel to hear the case. Accordingly, Intervenor Applicants’ Motion is properly before this Court.

ARGUMENT

16. “Liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process.” *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986); see *Virmani v. Presbyterian Health Servs. Corp.*, 127 N.C. App. 629, 648, 493 S.E.2d 310, 322 (1997) (The North Carolina rule for intervention and the federal rule are “substantially the same,” thus “the holdings of the federal circuit courts are instructive.” (citation omitted)), *aff’d in part, rev’d in part on other grounds*, 350 N.C. 449, 515 S.E.2d 675 (1999).

17. Intervention may be available as a matter of right or, if the party does not have an absolute right to intervene, the Court may allow permissive intervention. N.C. R. Civ. P. 24(a), (b). In either instance, the party’s motion must be timely and “accompanied by a pleading setting forth the claim or defense for which intervention is sought.” N.C. Rule Civ. P. 24(c). Intervenor Applicants are entitled here to intervene by right or, in the alternative, show that the Court should grant permissive intervention.

I. The Motion is Timely.

18. Regardless of whether the movant seeks to intervene as a matter of right or by permissive intervention, the motion must be timely. N.C. R. Civ. P. 24(a), (b). “In considering whether a motion to intervene is timely, the trial court considers ‘(1) the status of the case, (2) the possibility of unfairness or prejudice to the existing parties, (3) the reason for the delay in moving for intervention, (4) the resulting prejudice to the applicant if the motion is denied, and (5) any unusual circumstances.’ *Hamilton v. Freeman*, 147 N.C. App. 195, 201, 554 S.E.2d 856, 859 (2001) (quoting *Procter v. City of Raleigh Bd. of Adjust.*, 133 N.C. App. 181, 183, 514 S.E.2d 745, 746 (1999)).

19. Here, Intervenor Applicants' Motion is timely and does not prejudice Plaintiffs. This action has only just begun, with the Complaint and Plaintiff's outstanding Preliminary Injunction motions as the only filings. *See also Hamilton*, 147 N.C. App. at 201, 554 S.E.2d at 859-60 (2001) ["A motion to intervene is rarely denied as untimely prior to the entry of judgment . . ." (citations omitted)]; *compare, e.g., State Employees' Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264-65, 330 S.E.2d 645, 648 (1985) (denying intervention as untimely after entry of default) *with Defenders of Wildlife v. NCDOT*, 281 F.R.D. 264, 267 (E.D.N.C. 2012) (allowing intervention after responsive pleadings were filed, but before the record and summary judgment motions were due). In *Common Cause v. Lewis*, this Court permitted intervention by a group of Republican voters where the Motion to Intervene was filed over two months after the plaintiffs in that case filed their initial Complaint. Order Granting Motion to Intervene, *Common Cause v. Lewis*, Case No. 18-CVS-14001 (N.C. Super. Ct. February 26, 2019). In this case, Intervenor Applicants have moved even more quickly by filing within two weeks of Plaintiffs' initiating this action, and before any Defendants have filed any responsive pleadings. Accordingly, allowing the Motion will not substantially delay the proceedings and prejudice the Parties.

II. Intervenor Applicants Are Entitled to Intervention as a Matter of Right.

20. Rule 24(a) allows intervention of right "[w]hen (1) a statute confers an unconditional right to intervene, or (2) [w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." N.C. R. Civ. P. 24(a). Both subsections of Rule 24(a) apply here.

21. Under N.C. R. Civ. P. 24(a)(2), the Court must allow a party to intervene when the proposed intervenor demonstrates that “(1) [the intervenor] has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.” *Virmani*, 350 N.C. at 459, 515 S.E.2d at 683. A party has a direct interest in the action if “he will either gain or lose by the direct operation and effect of the judgment.” *Id.* at 459, 515 S.E.2d at 683 [quoting *Strickland v. Hughes*, 273 N.C. 481, 485, 160 S.E.2d 313, 316 (1968)].

22. Courts nationwide have recognized the substantial interest of elected representatives in cases challenging the legality of the districts they were elected to represent. *See, e.g., League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 188–89 (5th Cir. 1989) (noting that elected judges have cognizable interest in their individual capacity in racial gerrymandering challenge to judicial districts in Texas); *Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18CV357, 2018 WL 8805953 (S.D. Ohio Aug. 16, 2018) (granting permissive intervention of Republican members of Ohio congressional delegation in lawsuit challenging Ohio congressional maps as partisan gerrymanders); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1287 (S.D. Fla. 2002) (noting that congressional member in racial gerrymandering suit was granted intervention); *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995) (permitting intervention of congressional member whose congressional district was challenged in racial gerrymandering challenge); Order Granting Motion to Intervene, *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, Case No. 261 M.D. 2017 (Pa. Commw. Ct. Nov. 13, 2017) (granting intervention of Republican voters and Republican candidate for congress). Elected officials whose electoral districts are challenged as unlawful have “personal interests in

their office,” “equitable interests” in the timing and form of relief, and interests in their continued incumbency. *See Clements*, 884 F.2d. at 188; *see also Williams v. State Board of Elections*, 696 F. Supp. 1563, 1571–72 (N.D. Ill. 1988).

23. In this case, Intervenor Applicants have the same substantial interests in the legality of their districts as those recognized in courts nationwide. Though they were not responsible for drawing the 2016 Plans, Intervenor Applicants have invested countless hours of their time and energy learning their districts, listening to and addressing the needs of their constituency, *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (permitting congressmen to permissively intervene because, in part, they have an interest in representing their constituents) (citing and quoting *McCormick v. United States*, 500 U.S. 257, 272 (1991)), raising and spending money on electioneering activities, and developing coalitions of supporters within those districts. The remedy sought by Plaintiffs would likely destroy the relationships and goodwill developed by the Intervenor Applicants with the voters and residents in their respective districts formed over several years. Plaintiff’s remedy may also pair two or more Intervenor Applicants in the same districts, virtually guaranteeing that one or more of the double-bunked members will effectively be prevented from running in their district as the Republican candidate. *See Democratic Party v. Benkiser*, 459 F.3d 582, 586-588 (5th Cir. 2006) (an injury in fact exists when a candidate’s “election prospects and campaign coffers” are threatened.); *Barlow v. Collins*, 397 U.S. 159, 163-64 (1970) (noting that economic injury is the quintessential form of injury).

24. Furthermore, Intervenor Applicants have substantial interests in this action as voters and residents of their districts. If Plaintiffs’ right to vote is impaired, then Intervenor Applicants’ right is similarly affected. *See City of Boerne*, 659 F.3d at 434-435; *Bailey*, 326 N.C. at 747, 392 S.E.2d at 356. Plaintiffs seek to expand the concept of the right to vote in a way that

favors Plaintiffs over other North Carolina citizens, claiming the strength of their votes was impermissibly diluted by the 2016 Plan. (Compl. ¶ 135). If Plaintiffs' alleged right to enhanced representation exists, the Intervenor Applicants have that same right. But their political and policy views, as Republican Party voters, differ from Plaintiffs' views. Plaintiffs can only vindicate their interest in enhanced representation by diminishing the exact same interests of the Applicants.

25. As such, courts have routinely allowed voters to intervene in cases implicating their right to vote. *See, e.g., City of Boerne*, 659 F.3d 421; *NAACP, Inc. v. Duplin County*, 2012 WL 360018, at *5 (E.D.N.C. Feb. 2, 2012) (allowing voters' intervention as of right); *Miller v. Blackwell*, 348 F. Supp. 2d 916, 920 (S.D. Ohio 2004); *Carter v. Dies*, 321 F. Supp. 1358, 1360 (N.D. Tex. 1970), *aff'd sub nom. Bullock v. Carter*, 405 U.S. 134 (1972); *see also Republican Party of N.C. v. Martin*, 865 F.2d 1259 (4th Cir. 1988) (per curiam) (allowing intervention for association's interest in preserving the residency requirement for election of North Carolina judges); Order Granting Motion to Intervene, *Common Cause v. Lewis*, Case No. 18-CVS-14001 (N.C. Super. Ct. February 26, 2019) (allowing permissive intervention of Republican voters in lawsuit challenging state legislative district lines on claims of partisan gerrymandering).

26. In addition, this case directly implicates Article I, Section IV of the U.S. Constitution. This direct grant of authority to the state legislatures for drawing Congressional districts is a substantial interest shared by Intervenor Applicants, and deserves special consideration by this Court. *See Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000)

27. Intervenor Applicants' interests in this action are more personal and fundamental than those of the Legislative Defendants. As officeholders and candidates in the challenged districts, Intervenor Applicants are directly impacted by any changes in the boundaries of their

districts and the composition of their constituency. Further, as Republican voters who reside and vote in and around the districts Plaintiffs have expressly put at issue in this case, Plaintiffs' proposed remedy would directly impact their ability to work with Republican candidates in their counties, organize together, select their preferred candidates, and voice their values and political views.

28. These unique, substantial, and important legal interests are not adequately represented by the existing Defendants in this case, who consist of constitutional officers of North Carolina government whose official duty interests are not as personal and fundamental as the rights and interests of the Intervenor Applicants. *See League of United Latin Am. Citizens v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989) (discussing individual and official capacities and that “[a] voting rights case challenges the election process rather than the individuals holding office”). None of the Legislative Defendants have been sued in their individual capacity—only in their official capacity. *See id.* Moreover, none of the Defendants face the consequences of this Court granting Plaintiffs' requested relief in the same manner as the Intervenor Applicants, who suffer the threat of having his or her district redrawn in a manner detrimental to his or her interests as an elected official, candidate, and voter. Therefore, the Legislative Defendants cannot represent the interests of each district and the representatives thereof and candidates and voters therein, nor can they adequately represent the unique interest of the Intervenor Applicants as representatives, candidates, and voters.

29. Allowing Intervenor Applicants to intervene will ensure that these unique and important interests applicable to the congressional members, candidates, and voters are represented, and that this Court has the benefit of the evidence and legal argument Intervenor

Applicants can provide. Accordingly, intervention as of right pursuant to Rule 24(a)(2) should be allowed.

III. Intervenor Applicants Are Also Entitled to Permissive Intervention.

30. Rule 24(b) provides that a Court may allow intervention “(1) [w]hen a statute confers a conditional right to intervene, or (2) [w]hen a movant’s claim or defense and the main action have a question of law or fact in common.” N.C. R. Civ. P. 24(b). “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” N.C. R. Civ. P. 24(b)(2).

31. “Rule 24(b)(2) does not require a permissive intervenor to show ‘a direct personal or pecuniary interest in the subject of the litigation.’ ” *Koenig v. Town of Kure Beach*, 178 N.C. App. 500, 507, 631 S.E.2d 884, 889 (2006) (quoting *In re Searce*, 81 N.C. App. 531, 541, 345 S.E.2d 404, 410 (1986)). Indeed, the substantive issue to be addressed if the Intervenor Applicants are permitted to intervene—whether the future use of the 2016 Plan should be enjoined—is a separate determination that does not affect “the question of who should be allowed to appear and present the issue[.]” *Virmani*, 350 N.C. at 461, 515 S.E.2d at 684. Further, the trial court’s decision on permissive intervention is within its sound discretion and will not be disturbed absent a “ruling so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 460, 515 S.E.2d at 683 (citation omitted).

32. For the same reasons described above, the Intervenor Applicants’ claims or defenses have questions of law and fact in common with the main action, constituting a real and direct interest in the determination of whether the 2016 Plan is deemed invalid. Plaintiffs seek to invalidate the 2016 Plan on constitutional grounds, and Intervenor Applicants seek to defend the constitutionality of the Plan and, in general, defend their districts. Moreover, all the voters of an

affected district, like Intervenor Applicants here, have an equally protected interest in the constitutionality of the 2016 Plan. Furthermore, Intervenor Applicants have properly submitted a proposed answer as their responsive pleading, *see* N.C. R. Civ. P. 24(c), supporting the same.

33. Permitting the Intervenor Applicants to intervene would not result in undue delay or prejudice the adjudication of the rights of Plaintiffs or Defendants. The lawsuit was initiated two weeks ago, and there have been no responsive pleadings filed. Moreover, any possible prejudice that Plaintiffs might claim is substantially outweighed by the prejudice that Intervenor Applicants would suffer to their personal interests as Representatives, candidates, and voters in their respective districts if this Court denied their motion. The Court will also benefit from the evidence and legal argument Intervenor Applicants can provide. Accordingly, the Intervenor Applicants satisfy the requirements for permissive intervention, and the Court should allow the motion.

CONCLUSION

WHEREFORE, Intervenor Applicants respectfully request that the Court grant their Motion to Intervene as a matter of right or, in the alternative, with permission of the Court.

Pursuant to N.C. R. Civ. P. 24(c), an unsigned proposed Answer by Intervenor Applicants is attached hereto as **Exhibit A**. In the event that the Motion is granted, Intervenor Applicants ask that the Court allow them at least seven (7) days to file an Answer to Plaintiffs' Complaint.

This the 9th day of October, 2019.

SHANAHAN LAW GROUP, PLLC

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**Applications for Pro Hac Vice admissions
forthcoming*

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS 012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN
HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT
COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**INTERVENOR APPLICANTS'
PROPOSED ANSWER PURSUANT TO
RULE 24(C)**

NOW COME Potential Intervenor Ted Budd, Virginia Foxx, and Richard Hudson (“Intervenor Defendants”) and hereby submit this Proposed Answer pursuant to Rule 24(c) of the North Carolina Rules of Civil Procedure, as follows:

Any allegations not contained in numbered paragraphs are denied. Intervenor Defendants’ use of Plaintiffs’ headings is for convenience only, and is not an admission.

RESPONSE TO ENUMERATED ALLEGATIONS

INTRODUCTION

1. The Court’s opinion in *Common Cause v. Lewis* speaks for itself. The remaining allegations contained in Paragraph 1 are legal conclusions, which do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

2. Admitted that this case concerns North Carolina’s 2016 congressional map (“Congressional Map”). Denied that “there is no dispute” about the lawfulness of the Congressional Map. The remaining allegations contained in Paragraph 2 are legal conclusions,

which do not require a response, or allege facts about the Legislative Defendants to which Intervenor Defendants lack sufficient personal knowledge or information to respond; therefore, such allegations are denied.

3. Admitted that Republican candidates have won elections for 10 of North Carolina's 13 congressional seats since the 2016 Plan was adopted. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Intervenor Defendants lack sufficient personal knowledge or information to respond to the remaining allegations contained in Paragraph 3; therefore, such allegations are denied.

4. The opinion of the Supreme Court of the United States in *Rucho v. Common Cause* speaks for itself. This Court's opinion in *Common Cause v. Lewis* speaks for itself. The remaining allegations contained in Paragraph 4 are legal conclusions, which do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

5. This Court's opinion in *Common Cause v. Lewis* speaks for itself. The remaining allegations contained in Paragraph 5 are legal conclusions, which do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

PARTIES

A. Plaintiffs

6. Admitted that incumbent Rep. G.K. Butterfield won the NC-01 congressional race with 69.85% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 6; therefore, such allegations are denied.

7. Admitted that incumbent Republican Rep. George Holding won the NC-02 congressional race with 51.27% of the vote in 2018. Intervenor Defendants lack sufficient

information or knowledge to respond to the remaining allegations contained in Paragraph 7; therefore, such allegations are denied.

8. Admitted that then-incumbent Republican Rep. Walter Jones won the NC-03 congressional race with 100% of the vote in 2018. Admitted that now-incumbent Dr. Greg Murphy won the NC-03 congressional race with 61.7% of the vote in 2019. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 8; therefore, such allegations are denied.

9. Admitted that incumbent Democrat Rep. David Price won the NC-04 congressional race with 72.37% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 9; therefore, such allegations are denied.

10. Admitted that incumbent Republican Rep. Virginia Foxx won the NC-05 congressional race with 57.03% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 10; therefore, such allegations are denied.

11. Admitted that incumbent Republican Rep. Mark Walker won the NC-06 congressional race with 56.52% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 11; therefore, such allegations are denied.

12. Admitted that incumbent Republican Rep. David Rouzer won the NC-07 congressional race with 55.54% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 12; therefore, such allegations are denied.

13. Admitted that incumbent Republican Rep. Richard Hudson won the NC-08 congressional race with 55.34% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 13; therefore, such allegations are denied.

14. Admitted that Republican Rep. Dan Bishop won the NC-09 congressional race with 50.69% of the vote in 2019. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 14; therefore, such allegations are denied.

15. Admitted that incumbent Republican Rep. Patrick McHenry won the NC-10 congressional race with 59.29% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 15; therefore, such allegations are denied.

16. Admitted that incumbent Republican Rep. Mark Meadows won the NC-11 congressional race with 59.21% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 16; therefore, such allegations are denied.

17. Admitted that incumbent Republican Rep. Mark Meadows won the NC-11 congressional race with 59.21% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 17; therefore, such allegations are denied.

18. Admitted that incumbent Democrat Rep. Alma Adams won the NC-12 congressional race with 73.07% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 18;

therefore, such allegations are denied.

19. Admitted that incumbent Republican Rep. Ted Budd won the NC-13 congressional race with 51.54% of the vote in 2018. Intervenor Defendants lack sufficient information or knowledge to respond to the remaining allegations contained in Paragraph 19; therefore, such allegations are denied.

B. Defendants

20. Admitted upon information and belief.

21. Admitted upon information and belief.

22. Admitted upon information and belief.

23. Admitted upon information and belief.

24. Admitted upon information and belief.

25. Admitted upon information and belief.

26. Admitted upon information and belief.

27. Admitted upon information and belief.

28. Admitted upon information and belief.

29. Admitted upon information and belief.

30. Admitted upon information and belief.

31. Admitted upon information and belief.

JURISDICTION AND VENUE

32. The allegations of Paragraph 32 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

33. The allegations of Paragraph 33 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

34. The allegations of Paragraph 34 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

FACTUAL ALLEGATIONS

A. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Election

35. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 35; therefore, such allegations are denied.

36. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 36; therefore, such allegations are denied.

37. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 37; therefore, such allegations are denied.

38. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 38; therefore, such allegations are denied.

B. Republican Mapmakers Create the 2011 Plans from Party Headquarters With the Intent to Advantage Republicans and Disadvantage Democrats

39. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 39; therefore, such allegations are denied.

40. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 40; therefore, such allegations are denied.

41. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 41; therefore, such allegations are denied.

42. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 42; therefore, such allegations are

denied.

43. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 43; therefore, such allegations are denied.

44. Admitted that Republican candidates won 9 of 13 congressional seats in 2012. Admitted that the 2012 election results speak for themselves. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 44; therefore, such allegations are denied.

C. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

45. Admitted that the *Harris v. McCrory* opinion speaks for itself. Any remaining allegations contained in Paragraph 45 are denied.

46. Admitted that there was a supermajority of Republicans in both chambers of the General Assembly in 2016. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 46; therefore, such allegations are denied.

47. Upon information and belief, the referenced deposition transcript of Rep. David Lewis speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 47; therefore, such allegations are denied.

48. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 48; therefore, such allegations are denied.

49. Upon information and belief, the referenced deposition transcripts and trial testimony of Dr. Thomas Hofeller speaks for themselves. Intervenor Defendants lack sufficient

knowledge or information to respond to the remaining allegations contained in Paragraph 49; therefore, such allegations are denied.

50. Upon information and belief, the referenced deposition transcripts of Dr. Thomas Hofeller speaks for themselves. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 50; therefore, such allegations are denied.

51. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Upon information and belief, the referenced deposition transcript of Rep. David Lewis speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 51; therefore, such allegations are denied.

52. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Upon information and belief, the referenced deposition transcript of Rep. David Lewis speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 52; therefore, such allegations are denied.

53. Upon information and belief, the referenced deposition transcript of Rep. David Lewis speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 53; therefore, such allegations are denied.

54. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 54; therefore, such allegations are denied.

55. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 55; therefore, such allegations are denied.

56. Admitted, upon information and belief.

57. The Adopted Criteria speak for themselves. Any remaining allegations contained in Paragraph 57 are denied.

58. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 58; therefore, such allegations are denied.

59. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 59; therefore, such allegations are denied.

60. The Adopted Criteria speak for themselves. Any remaining allegations contained in Paragraph 60 are denied.

61. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 61; therefore, such allegations are denied.

62. The Adopted Criteria speak for themselves. Any remaining allegations contained in Paragraph 62 are denied.

63. The proceedings of the General Assembly are public records and speak for themselves. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 63; therefore, such allegations are denied.

64. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 64; therefore, such allegations are denied.

65. Intervenor Defendants lack sufficient knowledge or information to respond to the

allegations contained in Paragraph 65; therefore, such allegations are denied.

66. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 66; therefore, such allegations are denied.

67. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 67; therefore, such allegations are denied.

68. The referenced legislative record speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 68; therefore, such allegations are denied.

69. The proceedings of the General Assembly are public records and speak for themselves. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 69; therefore, such allegations are denied.

70. Upon information and belief, the referenced deposition transcript of Sen. Rucho speaks for itself. Intervenor Defendants lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 70; therefore, such allegations are denied.

D. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

71. Denied.

72. The 2016 electoral results speak for themselves. Any remaining allegations contained in Paragraph 72 are denied.

73. The 2018 electoral results speak for themselves. Specifically denied that the “adjust[ed]” vote percentage, after apparently taking out all votes from some of the most

Republican areas of North Carolina, is representative of how North Carolina voted in 2018 as a whole. Any remaining allegations contained in Paragraph 73 are denied.

74. The 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 74 are denied.

75. The 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 75 are denied.

76. To the extent Plaintiffs seek to introduce expert testimony from previous challenges to the 2016 Plan, Intervenor Defendants reserve the right to rebut such testimony with expert testimony of their own. To the extent the conclusions of Drs. Jowei Chen and Jonathan Mattingly are contained in expert reports disclosed in discovery, introduced into evidence or in trial testimony, such documents speak for themselves. Any remaining allegations contained in Paragraph 76 are denied.

E. The 2016 Plan Packs and Cracks Democratic Voters in Every District

77. Denied.

Congressional District 1

78. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 78 are denied.

79. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 79 are denied.

80. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 80 are denied.

81. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 81 are denied.

82. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 82 are denied.

Congressional District 2

83. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 83 are denied.

84. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 84 are denied.

Congressional District 3

85. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 85 are denied.

86. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 86 are denied.

Congressional District 4

87. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 87 are denied.

88. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 88 are denied.

Congressional District 5

89. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 89 are denied.

90. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 90 are denied.

Congressional District 6

91. Admitted upon information and belief that Greensboro is the third most populous city in North Carolina. Any remaining allegations contained in Paragraph 91 are denied.

92. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 92 are denied.

93. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 93 are denied.

94. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 94 are denied.

Congressional District 7

95. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 95 are denied.

96. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 96 are denied.

Congressional District 8

97. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 97 are denied.

98. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 98 are denied.

Congressional District 9

99. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 99 are denied.

100. The 2016 and 2018 electoral results speak for themselves. Any remaining

allegations contained in Paragraph 100 are denied.

Congressional Districts 10 and 11

101. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 101 are denied.

102. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 102 are denied.

103. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 103 are denied.

Congressional District 12

104. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 104 are denied.

105. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 105 are denied.

Congressional District 13

106. The Congressional Districts and their territorial locations speak for themselves. Any remaining allegations contained in Paragraph 106 are denied.

107. The 2016 and 2018 electoral results speak for themselves. Any remaining allegations contained in Paragraph 107 are denied.

F. Legislative Defendants Did Not Draw Any District in the 2016 Congressional Map to Comply with the Voting Rights Act

108. Upon information and belief, the referenced deposition transcript of Dr. Thomas Hofeller speaks for itself. Any remaining allegations contained in Paragraph 108 are denied.

109. The Adopted Criteria speak for themselves. Any remaining allegations contained

in Paragraph 109 are denied.

110. Upon information and belief, the referenced deposition transcripts of Rep. David Lewis and Sen. Rucho speak for themselves. Intervenor Defendants lack sufficient knowledge or information to respond to the allegations contained in Paragraph 110; therefore, such allegations are denied.

G. The U.S. Supreme Court Holds that Partisan Gerrymandering Claims Are Left to State Courts Applying State Constitutions

111. The opinion of the Supreme Court of the United States in *Rucho v. Common Cause* speaks for itself. The remaining allegations contained in Paragraph 111 are admitted, upon information and belief.

112. The Middle District of North Carolina's opinion in *Common Cause v. Rucho* speaks for itself. Any remaining allegations contained in Paragraph 112 are denied.

113. The opinion of the Supreme Court of the United States in *Rucho v. Common Cause* speaks for itself. Any remaining allegations contained in Paragraph 113 are denied.

114. The opinion of the Supreme Court of the United States opinion in *Rucho v. Common Cause* speaks for itself. Any remaining allegations contained in Paragraph 114 are denied.

H. The Superior Court Strikes Down North Carolina's State Legislative Maps Under the North Carolina Constitution

115. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 115 are denied.

116. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 116 are denied.

117. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 117 are denied.

118. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 118 are denied.

119. Denied.

COUNT ONE
Violation of the North Constitution's
Free Elections Clause, Art. I, § 10

120. Intervenor Defendants incorporate by reference their responses to all other paragraphs as if fully set forth herein.

121. The North Carolina Constitution speaks for itself. Any remaining allegations contained in Paragraph 121 are denied.

122. The cited documents speak for themselves. The remaining allegations of Paragraph 122 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

123. The cited documents speak for themselves. The remaining allegations of Paragraph 123 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

124. The North Carolina Constitution speaks for itself. The cited case law speaks for itself. The remaining allegations of Paragraph 124 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

125. The North Carolina Constitution and this Court's opinion in *Common Cause v. Lewis* speak for themselves. Any remaining allegations contained in Paragraph 125 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

126. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining

allegations contained in Paragraph 126 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

127. Denied.

128. Denied.

COUNT TWO
Violation of the North Constitution's
Equal Protection Clause, Art. I, § 19

129. Intervenor Defendants incorporate by reference their responses to all other paragraphs as if fully set forth herein.

130. The North Carolina Constitution speaks for itself. Any remaining allegations contained in Paragraph 130 are denied.

131. The cited case law speaks for itself. The remaining allegations in Paragraph 131 are legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

132. The *Stephenson* case speaks for itself. The remaining allegations in Paragraph 132 are legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

133. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 133 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

134. Denied.

135. Denied.

COUNT III
Violation of the North Constitution's
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

136. Intervenor Defendants incorporate by reference their responses to all other paragraphs as if fully set forth herein.

137. The North Carolina Constitution speaks for itself. Any remaining allegations contained in Paragraph 137 are denied.

138. The North Carolina Constitution speaks for itself. Any remaining allegations contained in Paragraph 138 are denied.

139. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 139 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

140. This Court's opinion in *Common Cause v. Lewis* speaks for itself. Any remaining allegations contained in Paragraph 140 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

To the extent that any portion of the Complaint and any of its subparts and sections contain allegations that have not been specifically responded to in this Answer, such allegations are denied. Furthermore, the Prayer for Relief and Headings contained in the Complaint (to the extent that the words and phrases contained therein may constitute allegations) are denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of estoppel, laches, and waiver. Specifically, Plaintiffs—most of whom were Plaintiffs represented by the same counsel in *Common Cause v. Lewis*—failed to raise these claims in their previous lawsuit challenging North Carolina legislative district maps as unconstitutional partisan gerrymanders. Plaintiffs' unreasonable delay harms the interests of Intervenor Defendants and other North Carolina candidates and voters who will suffer due to the confusion and delay Plaintiffs' proposed remedy would cause.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' politically-biased theory of liability is a non-justiciable political question and therefore the Amended Complaint should be dismissed pursuant to Rule 12(b)(1).

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs requests that this Court enter an order to the General Assembly dictating the time, places, and manner of holding the congressional elections. Such a request, if granted, violates Article I, Section 4 of the United States Constitution, which mandates that state legislatures set the "Times, Places and Manner of holding Elections for . . . Representatives[.]"

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to favor their preferred political party at the expense of their non-preferred political party. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution.

SIXTH AFFIRMATIVE DEFENSE

The North Carolina Constitution allows the General Assembly to consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions. *Stephenson v. Bartlett*, 355 N.C. 35, 562 SE.2d 377, 390 (2002). Plaintiffs' requested relief thus violates the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' politically-biased theory of liability, if adopted by this Court, would effectively bypass the People and adopt a judicial amendment of the North Carolina Constitution in violation of Article XIII.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' requested relief, to redraw legislative districts without any consideration of party affiliation, violates of the separation of powers doctrine, in Article I, Section 6 of the North Carolina Constitution.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' are requesting that the Court "punish" and "burden" Intervenor Defendants, both as candidates and voters, in the same way plaintiffs contend that the General Assembly has "punished" or "burdened" Democratic voters. Plaintiffs' request for equitable relief should therefore be denied because plaintiffs have unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that the Court enter an order and final judgment which:

1. Dismisses all of Plaintiffs' claims with prejudice;
2. Awards Defendants' their costs and attorneys' fees; and
3. Award Defendants such other and further relief as may be equitable and proper.

This the ____ day of October 2019.

SHANAHAN LAW GROUP, PLLC

By: _____

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**Applications for Pro Hac Vice admissions
forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **Motion to Intervene** upon all parties to this matter by placing a copy in the United States Mail, First Class, postage prepaid and addressed as follows:

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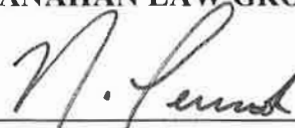
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This the 9th day of October, 2019.

SHANAHAN LAW GROUP, PLLC

By:



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STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2019 OCT 10 PM 2:49

19 CVS 012667

WAKE CO., C.S.C.

REBECCA HARPER, *et al.*

Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

CASE MANAGEMENT ORDER

THIS MATTER comes before the undersigned Three-Judge Panel upon its own motion for the purposes of setting out an orderly process to be followed for the submission of filed papers to the Court and requests for hearings.

This Case Management Order ("Order") establishes certain procedures to be used and sets deadlines for various matters likely to arise through trial. It shall remain in effect until rescinded by the Court or superseded by subsequent orders. The North Carolina Rules of Civil Procedure; the General Rules of Practice for the Superior and District Courts; and the Local Rules of Civil Superior Court for Wake County shall govern all matters not expressly covered by this Order.

This Order, as well as any subsequent case management orders and briefing schedules entered by the Court, shall bind all parties to this action and all parties added hereafter unless the Court orders to the contrary.

The Court may amend or supplement this Order as deemed appropriate by the Court upon its own motion or that of any party.

For the purpose of efficient management of this matter, the Court orders the following:

1. Electronic copies of all documents filed with the Clerk of Court shall be promptly transmitted by email to:
 - (a) 10th Judicial District Trial Court Administrator Kellie Myers (Kellie.Z.Myers@nccourts.org), and
 - (b) N.C. Judicial Fellow Adam Steele (Adam.H.Steele@nccourts.org).
2. The subject line of the transmittal email shall state a short caption of the case, the file number, and the name of the document transmitted (e.g. Harper v. Lewis (19 CVS 12667) – Plaintiffs’ Motion for Preliminary Injunction).
3. If the document being transmitted to the Court as per paragraph 1 above is a motion, the body of the email shall state, if applicable:
 - (a) Whether all parties consent to the entry of an order granting the requested relief;
 - (b) Whether the movant is requesting a hearing;
 - (c) Whether the movant has conferred with opposing counsel for purposes of recommending a proposed briefing schedule and hearing dates and, if so, those recommendations; and
 - (d) Such other matters that ought to be brought to the Court’s attention regarding the scheduling and disposition of the motion.
4. If the parties have not conferred about a motion being transmitted to the Court, all opposing parties, through counsel, shall promptly upon receipt of the transmitting email, respond by email to the persons listed in paragraph 1 above with the following information:
 - (a) Whether the responding party consents to the entry of an order granting the relief requested by the movant;

- (b) Whether the responding party is requesting a hearing;
 - (c) Whether the responding party intends to submit a written reply or memorandum, and if so, the period of time the responding party wishes to be allowed for its reply; and
 - (d) Such other matters that ought to be brought to the Court's attention regarding the scheduling and disposition of the motion.
5. All counsel shall be cc'd on any email correspondence required by this Order.
6. In instances where a hearing before the three-judge panel is required, upon receipt of the foregoing information, the Trial Court Administrator shall endeavor to arrange a hearing. Counsel should be mindful of the fact that facilities and court personnel to conduct three-judge panel hearings are limited, and coordinating the schedules of the members of the three-judge panel, in light of their already existing dockets, can be difficult. Hence, counsel should attempt to give ample notice of the need for a hearing and, where possible, bundle all pending matters for a single hearing date.
7. Any document required to be served on a party (other than a summons and complaint or third-party complaint) may be served on parties via e-mail. Briefs or memoranda provided to the Court may not be filed with the Clerk of Court unless ordered by the Court, pursuant to NCRCP Rule 5. Any changes to parties' or counsels' e-mail addresses must be made in writing to all parties/counsel and to the Court as per paragraph 1 above.
8. Counsel shall transmit to the Court any document it intends to present at a hearing at least five (5) business days before the date of such hearing, unless otherwise ordered. The document shall be transmitted to the Court as per paragraph 1 above.

9. Proposed orders, when requested by the Court, shall be transmitted to the Court as per paragraph 1 above, in Microsoft Word format.
10. Counsel should be familiar with *98 Formal Ethics Opinion 13* issued by the N.C. Bar in July 1999, entitled *Written Communications with a Judge or Judicial Official*, and communications required by this Order should comport therewith.

SO ORDERED, this the 10th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

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Counsel for Intervenor-Applicants

This the 10th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District

kellie.z.myers@nccourts.org

**Admitted Pro Hac Vice*

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

WAKE CO., C.S.C.

REBECCA HARPER, *et al.*

Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

NOTICE OF HEARING

To: Counsel for all Parties

TAKE NOTICE that the Three-Judge Panel assigned to this action will conduct an in-person hearing on the below pending motions as follows:

Pending Motions: Intervenor-Applicants' Motion to Intervene,
filed October 9, 2019
Plaintiffs' Motion for a Preliminary Injunction,
filed September 30, 2019

Date/Time: Thursday, October 24, 2019, at 10:00 a.m.

Location: Campbell University School of Law
Boyce Courtroom
225 Hillsborough Street
Raleigh, NC 27603

This the 10th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator, 10th Judicial District

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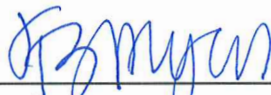
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Counsel for Intervenor-Applicants

This the 10th day of October, 2019.



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STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2019 OCT 10 PM 2:49

19 CVS 012667

REBECCA HARPER, *et al.* WAKE CO., C.S.C.

Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

ORDER

THIS MATTER comes before the undersigned three-judge panel upon Plaintiffs' Motion for Expedited Proceedings, filed September 30, 2019.

On September 27, 2019, Plaintiffs filed a verified complaint in Superior Court, Wake County, seeking a declaration that the current North Carolina congressional districts, established by an act of the General Assembly in 2016, N.C. Sess. Laws 2016-1 (Senate Bill 2), violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2016 congressional districts. On September 30, 2019, this action was assigned to the undersigned panel by the Chief Justice of the Supreme Court of North Carolina.

On September 30, 2019, Plaintiffs filed a motion for preliminary injunction and a motion for expedited briefing and resolution of Plaintiffs' motion for a preliminary injunction. On October 2, 2019, Defendants North Carolina State Board of Elections and its members (hereinafter "State Defendants") notified the Court that they support expedited consideration of this matter because candidate filing for congressional primaries is set to begin on December 2, 2019. On October 7, 2019, counsel for Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker Timothy K. Moore, President Pro Tempore Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton

(hereinafter “Legislative Defendants”) entered notices of appearance. On October 9, 2019, a motion to intervene was filed by three incumbent Congressional Representatives (hereinafter “Intervenor Applicants”), seeking to intervene in this action in both their capacity as Representatives and as residents and voters in three of the Congressional districts challenged in Plaintiffs’ verified complaint.

A separate Case Management Order has been contemporaneously entered with this Order.

After reviewing the pleadings and motion for expedited proceedings, the Court, in its discretion and for good cause shown, hereby ORDERS that Plaintiffs’ motion for expedited proceedings is GRANTED in part as follows:

1. Any Defendant desiring to respond to Plaintiffs’ motion for a preliminary injunction shall submit a response brief to the Court by 5:00 p.m. on October 21, 2019, in the manner set forth in the Case Management Order.
2. Plaintiffs shall submit any reply briefs to the Court by 5:00 p.m. on October 23, 2019, in the manner set forth in the Case Management Order.
3. Plaintiffs’ motion for preliminary injunction will be heard by the Court at 10:00 a.m. on October 24, 2019.
4. If Intervenor-Applicants desire to respond to Plaintiffs’ motion for preliminary injunction, they may submit a response brief to the Court by 5:00 p.m. on October 21, 2019, in the manner set forth in the Case Management Order and, if they desire to be heard at the hearing on October 24, 2019 on Plaintiffs’ motion, they shall be prepared to be heard on that date. In the event that the Court allows the Intervenor-Applicants’ Motion to Intervene, the Court shall consider any brief and arguments made by the Intervenor-Applicants.
5. Plaintiffs’ other requests relating to scheduling in the motion for expedited proceedings are otherwise denied.

SO ORDERED, this the 10th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

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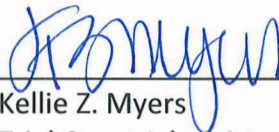
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Counsel for Intervenor-Applicants

This the 10th day of October, 2019.



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STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

2019 OCT 10 PM 2: 49

REBECCA HARPER, *et al.*

Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

ORDER

This cause coming on to be heard before the undersigned on the motion of Burton Craige, Narendra K. Ghosh, and Paul E. Smith, attorneys duly admitted to the Bar of the State of North Carolina, for the admission of R. Stanton Jones, Elisabeth Theodore, Daniel Jacobson, William Perdue, Sara Murphy D'Amico, and Graham White, as counsel for Plaintiffs in connection with this case.

IT IS THEREFORE ORDERED that R. Stanton Jones, Elisabeth Theodore, Daniel Jacobson, William Perdue, Sara Murphy D'Amico, and Graham White of the law firm Arnold & Porter Kaye Scholer LLP are allowed to practice in the General Court of Justice of North Carolina and appear on behalf of Plaintiffs in the above-captioned legal proceeding.

SO ORDERED, this the 10th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

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Counsel for Intervenor-Applicants

This the 10th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District

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Exhibit 2

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE)
BOWSER, and SAMUEL LOVE,) Greensboro, North Carolina
) October 13, 2015
Plaintiff,) 9:01 a.m.
)
vs.)
)
PATRICK MCCRORY, in his)
capacity as Governor of North) Case No. 1:13CV949
Carolina, NORTH CAROLINA STATE)
BOARD OF ELECTIONS, and JOSHUA)
HOWARD, in his capacity as)
Chairman of the North Carolina)
State Board of Elections,)
)
Defendants.)
)

TRANSCRIPT OF BENCH TRIAL VOLUME I OF III HELD BEFORE
THE HON. **WILLIAM L. OSTEEN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **MAX O. COGBURN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **ROGER L. GREGORY**, UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: **KEVIN J. HAMILTON**
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Seattle, WA 98101-9741

EDWIN M. SPEAS , JR.

JOHN WARD O'HALE

Poyner Spruill, LLP

POB 1801

Raleigh, NC 27602-1801

For the Defendant: **THOMAS A. FARR**
PHILLIP JOHN STRACH
Ogletree Deakins Nash Smoak & Stewart
POB 31608
Raleigh, NC 27622

1 APPEARANCES, CONTINUED:

2 For the Defendant: **ALEXANDER MCCLURE PETERS**
N.C. Department of Justice
3 POB 629
4 Raleigh, NC 27602-0629
5
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22 Court Reporter: Joseph B. Armstrong, RMR, FCRR
324 W. Market, Room 101
23 Greensboro, NC 27401

24 Proceedings reported by stenotype reporter.
25 Transcript produced by Computer-Aided Transcription.

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P R O C E E D I N G S

(At 9:01 a.m., proceedings commenced.)

JUDGE OSTEEEN: All right. Good morning, everyone. All the lawyers know who everyone is, but just so that everybody understands, Judge Gregory, being the gentleman that he is, is seated to my right. It will be the only time that I'm seated in the middle of a panel with Judge Gregory seated to my right, and Judge Cogburn is to my left.

So we'll go -- we'll calling for trial Case No. 13CV949, Harris, et al., versus McCrory, et al. So I'll start with the plaintiffs. If you will, just state for the record who is seated at counsel table at this point.

MR. HAMILTON: Good morning, Your Honor. Kevin Hamilton for the plaintiffs. With me today is he Eddy Speas to my immediate right, and to his right John O'Hale representing the plaintiffs.

JUDGE OSTEEEN: All right. And the plaintiffs are ready to proceed?

MR. HAMILTON: We are, Your Honor.

JUDGE OSTEEEN: All right. Mr. Farr?

MR. FARR: Thank you very much, Your Honor. We appreciate you being here today. My name is Tom Farr. I'm from the Raleigh office of Ogletree Deakins. With me is Alex Peters. He's from the North Carolina Attorney General's Office. Next to Mr. Peters is Phil Strach, who is my law

1 partner at Ogletree Deakins, and at the far end of the table is
2 our ace, super duper paralegal Philen Alexander who we've
3 stolen from the Charlotte office and made him be here today
4 even though he has more interesting things and more pleasurable
5 things to do in Charlotte.

6 JUDGE OSTEEEN: All right. Well, welcome everyone.
7 And defendants are ready to proceed, Mr. Farr?

8 MR. FARR: Yes, we are, Your Honor.

9 JUDGE OSTEEEN: All right. Well, we will proceed
10 ahead with this hearing. Yesterday, the parties filed a
11 stipulation. I think all of us have seen that and reviewed
12 that. As I indicated at this point in time, we are denying the
13 motion to stay without prejudice.

14 We have two motions in limine that are pending. We
15 will address those briefly further once we get to that expert
16 testimony, and at this point I anticipate that we will be --
17 whether you want to call it denying the motion in limine
18 without prejudice or reserving judgment on it, we will probably
19 go ahead and hear the testimony in its entirety subject to
20 whatever objections remain. We'll discuss that further when
21 the experts are called.

22 Will either one of those experts be called today, do
23 you think, Mr. Hamilton?

24 MR. HAMILTON: It's possible that Dr. Ansolabehere
25 might be called by the end of the day. It's possible.

1 JUDGE OSTEEEN: Okay. Well, we'll see how we get
2 along. Once you get ready to call one of those experts, we'll
3 talk about procedures related to that at that particular time.

4 All right. The parties may proceed with their
5 opening statements. The plaintiff is recognized.
6 Mr. Hamilton?

7 MR. HAMILTON: Thank you, Your Honors. And for the
8 record, it's Kevin Hamilton again. I appear on behalf of the
9 plaintiffs in this litigation, David Harris and Christine
10 Bowser.

11 The Equal Protection Clause of the Fourteenth
12 Amendment forbids race-based redistricting absent a compelling
13 state interest, and even then only when narrowly tailored to
14 meet that state interest. The evidence will show that in 2011
15 the North Carolina General Assembly used race as the
16 predominant factor in drawing North Carolina's 1st and
17 12th Congressional District, had no compelling state interest
18 for doing so, and in all events failed to narrowly tailor those
19 districts to that state interest.

20 The evidence will show that the General Assembly
21 manipulated these districts by moving voters in and out of the
22 districts based on the color of their skin. With respect to
23 CD 1, the 1st Congressional District, racial predominance is
24 really not in serious dispute. The General Assembly increased
25 the number of African-Americans in the district with the

1 express goal of creating a majority-black district, what they
2 called a Voting Rights Act District, all on the theory that
3 doing so is somehow required by the Voting Rights Act. There's
4 no dispute what was going on here. The defendants baldly admit
5 their purpose was to increase the black voting-age population
6 to 50 percent plus one or higher.

7 With respect to the 12th Congressional District, the
8 General Assembly drew the district to include the heavily
9 African-American population of Guilford County on the theory
10 that doing so was required by Section 5 to prevent
11 retrogression. Again, this was hardly a secret. The
12 legislators explained that they drew the proposed 12th
13 Congressional District, and I quote, At a black voting-age
14 level that is above the percentage of black voting-age
15 population found in the current district to ensure
16 preclearance, closed quote, under Section 5 of the Voting
17 Rights Act. That's Plaintiff's Exhibit 68.

18 The evidence plaintiffs will put before the Court
19 come from the mouths of the defendants themselves, their
20 emails, their statements on the floor of the General Assembly,
21 their documents.

22 In addition, plaintiffs will call several witnesses.
23 First this morning, Senator Dan Blue, a member of the General
24 Assembly, who observed firsthand the enactment of this flawed
25 plan, will testify. The current incumbents in both of these

1 two districts, Representative Watt and Representative
2 Butterfield, will testify. Both of them opposed the plan as
3 did the entire Black Caucus in the General Assembly, and both
4 of them informed the defendants that the plan was legally
5 flawed and unnecessary as a practical matter.

6 And we will present two expert witnesses. The first
7 is Dr. David Peterson, and the second is Dr. Steven
8 Ansolabehere. Dr. Peterson analyzed precincts on the borders
9 of these districts in the *Cromartie* litigation in 2000 here in
10 North Carolina, and the Supreme Court specifically discussed
11 and relied on his analysis in its decision in that case in
12 finding that race did not predominate in the construction of
13 the districts at that time. Dr. Peterson will repeat his
14 analysis here but reaches the opposite conclusion using the
15 same methodology, but different data. And then finally,
16 Dr. Ansolabehere will testify using several different analyses
17 that race predominated in the drawing of these districts.

18 Together, the evidence will show that race, not
19 politics, was the predominant purpose of this redistricting
20 plan from start to finish and that neither district was
21 narrowly tailored to achieve a compelling state interest, and,
22 as a result, the plans necessarily fail constitutional muster
23 and must be invalidated.

24 Now, I know the Court has already had the benefit of
25 the parties' briefing in the trial brief before the proceeding

1 got started, so rather than repeat or do a dramatic recitation
2 of the trial brief that you've already read, I thought I would
3 just emphasize a couple of -- a handful of key facts that we
4 believe will be clear from the record and will be established
5 during the course of the trial.

6 First, the evidence will show that the incumbent
7 representatives in the 1st and 12th Congressional Districts
8 were safe in winning re-election by large margins of victory.
9 In the jury box, we've blown up the table showing the election
10 results and the black voting-age population. We'll also be
11 showing that on the screen during the course of the trial
12 showing the black voting-age population and then the election
13 results, the winning margin.

14 Congressional District 1 was first drawn in its
15 present configuration in 1992. Between 1997 and 2001, the
16 black voting-age population fell below 50 percent. It has
17 remained below 50 percent since that time until -- all the way
18 up until this redistricting exercise. CD 12 is similar. From
19 1997 to 2011 it had a black voting-age population well below
20 50 percent.

21 Yet, despite the fact that neither district was a
22 majority African-American district, African-American candidates
23 of choice easily and consistently won re-election in an
24 unbroken string of clear and overwhelming electoral victories.
25 How did that happen? It happened because white voters crossed

1 over to vote with African-American voters to elect those
2 candidates. It's simple now. That's what happened. And
3 that's a terrific result, and that's one we should all be proud
4 of and applaud.

5 But rather than applaud this post racial success in
6 these two districts where white and black voters united to
7 elect candidates of choice, the North Carolina General Assembly
8 chose instead to dismantle both districts and to sort voters by
9 the color of their skin packing black voters into CD 1 and
10 CD 12 and astonishingly now stand before this Court and assert
11 that the Voting Rights Act, of all things, somehow required
12 dismantling these two districts sorting voters by race and
13 creating black and white electoral districts. To put it
14 delicately, that's a decidedly odd reading of the Voting Rights
15 Act of 1965.

16 Second, the record will demonstrate that neither
17 district has been challenged under the Voting Rights Act at any
18 point in the last 20 years, not once. Both districts have been
19 consistently precleared pursuant to Section 5 of the Voting
20 Rights Act, and neither has been the subject of a lawsuit under
21 Section 2. In fact, the evidence will show there's been no
22 state-wide redistricting Section 2 lawsuit filed in over three
23 decades in this state, and for good reason. As the historical
24 record vividly demonstrates, white and blacks in these
25 districts have voted for the same candidate in numbers

1 sufficient to elect the African-American candidate of choice.

2 In other words, in the words of *Gingles*, the white
3 majority did not, quote, vote as a bloc to the African-American
4 candidates of choice, closed quote. Precisely the opposite
5 happened. Significant crossover voting supporting
6 African-American preferred candidates occurred. On such a
7 record, there's really no credible argument that baldly
8 increasing the black voting-age population levels of these
9 districts is somehow required to avoid liability.

10 Third, the evidence will show that the General
11 Assembly used a mechanical 50 percent black voting-age
12 population floor in drawing these two districts. The evidence
13 is clear, direct, and undisputed.

14 With respect to CD 1, defendants baldly admit their
15 goal of achieving a racial threshold of 50 percent black
16 voting-age population. Senator Rucho and Representative Lewis
17 labeled CD 1 a "VRA district" and explicitly instructed
18 Dr. Hofeller to draw the district to increase the black
19 voting-age population to more than 50 percent. The point's
20 critical, and the point is entirely undisputed. Dr. Hofeller
21 will admit it from the stand.

22 With respect to CD 12, Senator Rucho and Lewis
23 conceded that it was not what they called a "VRA district," but
24 they pointed to Guilford County, which is a covered
25 jurisdiction under Section 5, or was a covered jurisdiction

1 under Section 5 of the Voting Rights Act, as a reason to ensure
2 that the existing black voting-age populations in the district
3 be maintained or increased. This is plain constitutional
4 error. That score is now settled beyond dispute by the Supreme
5 Court's recent decision last year in the *Alabama* case which
6 flatly condemned the use of such mechanical racial targets and
7 by the recent decision in the United States District Court for
8 the Eastern District of Virginia decided just last year in *Page*
9 *versus Virginia State Board of Elections* which similarly struck
10 down the use of a 55 percent black voting-age population
11 threshold for Virginia's Third Congressional District.

12 But even if the direct evidence were not so clear and
13 undisputed, the circumstantial evidence makes clear what's
14 going on. Both districts -- and I've blown up easels. Here is
15 CD 1, and there is CD 12 -- make a mockery of traditional
16 redistricting principles. Whether measured by split counties
17 or split VTDs or highly irregular shapes, you can take a look
18 what's called the "interocular test" and see that these are
19 unusually shaped districts.

20 Fourth, although Senator Rucho and Representative
21 Lewis pointed to the Supreme Court's decision in *Strickland*
22 *versus Bartlett* as requiring at least 50 percent BVAP, that's
23 the explanation, to be clear, that the defendants will offer
24 that *Strickland* somehow required this. The case doesn't say
25 anything of the sort. *Strickland* was a badly splintered

1 Supreme Court decision. The plurality opinion only had three
2 justices sign on to it, and those three justices explicitly
3 recognized that where, as here, there's substantial crossover
4 voting, it is, by definition, impossible to establish liability
5 under Section 2 because of the absence of racially polarized
6 voting sufficient to defeat the African-American candidate of
7 choice from being elected. How do we know that's not existing
8 here? Those tables are a vivid testament to that, 20 years of
9 African-Americans every year being elected year after year.

10 The Court went out of its way in *Strickland* to point
11 out the irony if the Voting Rights Act interpreted to entrench
12 racial differences. Here's what they said, quote: Crossover
13 districts are by definition the result of white voters joining
14 forces with minority voters to elect their preferred candidate.
15 The Voting Rights Act was passed to foster this cooperation,
16 closed quote. The statute most assuredly does not require
17 balkanization of voters on the basis of race, particularly
18 where, as here, there is no evidence of racial bloc voting that
19 would deny minority voters the opportunity to elect the
20 candidate of their choice.

21 Fifth, the evidence will show that 50 percent black
22 voting-age rule predominated over all other criteria, save one
23 man, one vote, one person, one-vote. Defendants apparently
24 intend to present evidence that they considered political
25 factors in drawing these maps, and they may well have done so,

1 but only after satisfying the nonnegotiable goal of creating
2 majority minority districts. It was hardly an accident that
3 both of these districts ended up above 50 percent black
4 voting-age population. That was the whole point of the
5 exercise.

6 Dr. Hofeller will testify that he considered black
7 voting-age population levels when drawing CD 1, but he will
8 also testify that as to CD 12 he only used the 2008
9 presidential election results to draw CD 12, and he used those
10 results in order to favor Republicans and disfavor Democrats.
11 But using a racially charged election involving the first
12 African-American major party candidate for the United States
13 presidency in US history, if you use that as the measuring
14 stick, that hardly shelters what's going on here. The 2008
15 presidential election results in CD 12 were much more closely
16 coordinated with race than party affiliation as
17 Dr. Ansolabehere will testify.

18 Sixth, the evidence will show that the defendants
19 cannot identify a compelling state interest to justify the use
20 of race in drawing these districts. Defendants contend that
21 the General Assembly's alleged goal of complying with Section 2
22 and Section 5 of the Voting Rights Act justified its use of
23 race in drawing these districts, but the only way to survive
24 strict scrutiny since the Supreme Court's decision in *Miller*
25 *versus Johnson* is to ensure that the plans were actually -- is

1 to prove that the plans were actually required by Section 5.

2 But there's no plausible argument here that either
3 Section 2 or Section 5, properly interpreted, required a
4 50 percent black voting-age population. There's no safe
5 harbor, as the defendants like to say. Both of these districts
6 were already performing for minority preferred candidates with
7 large winning majorities. There was no need to increase those
8 to levels that would be embarrassing to even Eastern European
9 dictators.

10 The question under Section 5 is whether there's been
11 retrogression, that is, whether the proposed plan would reduce
12 minority voters' effective ability to elect candidates of their
13 choice. It most assuredly does not command a state to match,
14 much less significantly increase, the preexisting level of
15 minority population without regard to the minority communities'
16 actual ability to elect. If that's what the General Assembly
17 thought or was advised, it was just wrong.

18 If the Supreme Court's decision last year in *Alabama*
19 means anything, it means that this is a district-specific
20 analysis and mechanical, numerical thresholds are forbidden.
21 The burden is on the state to establish that it had a strong
22 basis in evidence -- that's the quote -- strong basis in
23 evidence for believing that Section 5 required it to draw these
24 districts with this level of black voting-age population; and
25 in the absence of such a showing, the plan necessarily fails

1 the strict scrutiny analysis. Here, the defendants will fail
2 in that showing.

3 Defendants claim that racially polarized voting
4 exists generally in North Carolina, but that certainly doesn't
5 establish racially polarized voting in these two specific
6 districts; and, as *Alabama* teaches, this is an analysis that is
7 district-specific, not state-wide. That's the whole reason for
8 the reversal in *Alabama*. The analysis there was done on a
9 state-wide level, and the Court reversed and said you can't do
10 it that way. It's done state-wide, done with a flat black
11 voting-age population threshold.

12 In the absence of such a district-specific analysis,
13 it's simply impossible to have a strong basis in evidence for
14 believing that either Section 2 or Section 5 required
15 increasing the number minority voters to achieve the 50 percent
16 BVAP in these districts, and the evidence will show that the
17 authors of the enacted plan simply declined to conduct such an
18 analysis and chose instead to guess -- set a rule of 50 percent
19 and pack black voters into these districts.

20 That approach, no matter how well-intentioned -- and
21 this is not an intent case. We don't have the burden and don't
22 intend to try and show that anyone was motivated by ill-intent
23 here. No matter how well-intentioned, using this approach to
24 draw these districts cannot be considered a strong basis in
25 evidence for believing that Section 5 required them. Simply

1 invoking the name of the Voting Rights Act without actually
2 conducting an analysis, as required by the statute, cannot
3 inoculate race-based redistricting from constitutional
4 scrutiny.

5 Seventh, even if the defendants could identify
6 compelling state interest, they can't meet their burden of
7 proving that these districts were narrowly tailored to meet
8 that interest. The Supreme Court long ago declared the
9 reapportionment plan, quote, would not be narrowly tailored to
10 the goal of avoiding retrogression if the state went beyond
11 what was reasonably necessary to avoid retrogression. That's
12 the *Shaw* case from this very state.

13 But that's exactly the evidence that will be placed
14 before you in this case. Both districts consistently
15 cleared -- consistently elected African-American candidates of
16 choice by wide margins. No straight-faced argument can be
17 advanced that either needed to have their black voting-age
18 population increased in order to prevent retrogression. As the
19 Court declared in *Shaw*, covered jurisdictions do not have carte
20 blanche to engage in racial gerrymandering in the name of
21 retrogression. That's exactly what happened here.

22 Now, before I sit down, let me just mention. There
23 is a parallel state court litigation challenging these
24 districts. It is pending before the North Carolina Supreme
25 Court. The state trial court in that case issued a decision

1 before the US Supreme Court issued the decision in *Alabama*,
2 and, as a result, the Court failed to review these two
3 districts on a district-specific basis and didn't have the
4 teaching of *Alabama* to assist it in resolving the cases, but
5 that's the status of the stated Court litigation.

6 The Supreme Court emphasized in its *Miller* decision
7 that, quote, the essence of the Equal Protection claim
8 recognized in *Shaw* is that the state used race as a basis for
9 separating voters into districts without any compelling state
10 interest necessitating such race-based redistricting.

11 The *Strickland* plurality decision as well condemned
12 racial balkanization where minority communities had
13 successfully joined forces with white voters to achieve
14 electoral success, and *Strickland* noted the irony if the
15 shining star of the Civil Rights Act -- shining star of the
16 Civil Rights movement were interpreted to actually require
17 separation of voters into districts according to the color of
18 their skin.

19 The *Shaw* court condemned the redistricting plan there
20 because they, quote, threatened to carry us further from the
21 goal of a political system in which race no longer matters, a
22 goal that the Fourteenth and Fifteenth Amendment embody and to
23 which the nation continues to aspire, closed quote.

24 So, too, will the evidence condemn the plans before
25 this Court. The evidence will show that the General Assembly

1 used race, not politics, as a predominant factor in drawing
2 these districts and that this constitutionally suspect use of
3 race was neither required by a compelling state interest nor
4 narrowly tailored to further any such interest.

5 At the conclusion of the trial, the plaintiffs will
6 ask this Court to invalidate these two districts and to
7 implement appropriate, immediate, and effective remedies.
8 Thank you, Your Honors.

9 JUDGE OSTEN: All right. Give me just a moment.
10 All right. Mr. Farr, or whoever is ready to proceed for the
11 defense.

12 MR. FARR: I am, Your Honor. Suffice it to say, Your
13 Honor, that we have strong disagreements with the plaintiffs in
14 the way they've outlined the facts and the applicable law in
15 the case.

16 What this case is really about, Your Honors, is it's
17 a political case. The legal fees in this case are being paid
18 by something called the National Democratic Voting Rights Trust
19 Fund who are bringing cases like this all across the United
20 States. The reason why this case was brought is because a
21 Democratic General Assembly enacted the 2001 Congressional Plan
22 in a way that favored the Democratic Delegation, and the 2011
23 General Assembly enacted a plan that favored the Republican
24 Delegation. The only way that the plaintiffs, who we contend
25 are bound by the prior decision in the *Dickson* case, and their

1 counsel in the National Democratic Voting Rights Trust Fund can
2 try to get these plans thrown out is through the legal theories
3 they're alleging in this case which were also litigated in the
4 *Dickson* case.

5 So we disagree with plaintiffs' counsel. We do not
6 think the evidence will show that race was the predominant
7 motive for either one of these districts. District 12 was
8 drawn based upon political characteristics as it had been done
9 in 1997 and in 2001. The difference between District 12 is
10 that in '97 and 2001, it was drawn by a Democratic legislature
11 to be a strong Democratic district, but enough Democratic votes
12 were shaved out of the district to create strong adjoining
13 Democratic districts such as the former Senate -- or
14 Congressional District 13. You'll see a picture of that. It
15 is at least as bizarre looking as any of the other
16 congressional districts that have been drawn in North Carolina.
17 It stretched from Raleigh to Guilford County. It was drawn by
18 the Chairman of the Senate Redistricting Committee, Brad
19 Miller, who then ran that district and was elected to Congress
20 in that district.

21 In the Mecklenburg area, Mecklenburg County was added
22 to the 8th Congressional District in the 2001 plan in order to
23 create a stronger Democratic 8th District which ultimately
24 resulted in the defeat of the Republican incumbent in that
25 district, Robin Hayes, by Congressman Kissell. So this case is

1 about politics.

2 If the Court finds that the 1st District -- if you
3 find that the race was the predominant motive in the 1st
4 District, then we believe the evidence will show that there was
5 a compelling governmental interest, that there's a substantial
6 basis in the evidence to support that. I'll go over some of
7 that as I walk through a history of the Congressional Plan, but
8 I'm not really sure how plaintiffs can say that the district --
9 that either the legislature or the Court in *Dickson* did not do
10 a district-by-district analysis.

11 The legislature had two polarization experts that
12 studied racially polarized voting in all of the counties in
13 which the 1st Congressional District is located, and this now
14 brings me, Your Honors, to a couple map notebooks that are
15 going to be helpful to the Court. I'm not going to hand this
16 one up right now, but Exhibit 22 is the map notebook that the
17 parties provided the three-judge court in the *Dickson* case; and
18 what this notebook has in it, it has all of the so-called
19 benchmark plans, the benchmark plans being the plans that were
20 in place during the 2010 general election. So in the case of
21 the congressional district, it's the 2001 Congressional Plan
22 which is also known as the zero deviation plan. It has the
23 2003 Senate plan, and it has the 2009 House plan.

24 The House plan was amended in 2009 because of the
25 case which we've cited to the Court called *Strickland v.*

1 *Bartlett*, and we do think that a case says that if you're going
2 to draw a VRA district, a Section 2 district, the black
3 voting-age population needs to be above 50 percent. That is
4 how the state interpreted that case, and I know that one of the
5 dissenting judges in *Strickland* interpreted that case as
6 stating that the legislature should create VRA districts that
7 are above 50 percent.

8 So what else is in this notebook, Your Honors, are
9 all of the alternative proposed maps for the Congress, for the
10 House, for the Senate, and included in this notebook is what we
11 call the "stat pack" which has got all of the census categories
12 in it. It has election results for all the districts. This
13 will make more sense to you when you actually see the notebook.

14 But a point that's very important, Your Honor, is
15 that this notebook is based upon the 2010 Census; and, during
16 the course of this case, you'll discover that there's two
17 different categories to measure black population. There's a
18 category called "single-race black population," and there's a
19 category that the Census Bureau calls "any part black
20 population." "Any part black population" is where the person
21 reports themselves as being black and some other race in
22 addition to being black.

23 So those are two different categories. That's
24 important to understand because when we go to the charts that
25 the plaintiffs have over here, and we'll point this out when we

1 get a chance, they talk about the black population in these
2 districts, the black voting-age population. I've looked at
3 these charts just before we started today, and the black
4 voting-age population they list for the 2011 1st and
5 12th Districts is from the 2010 Census, and it's the any part
6 black voting-age population. That term "any part black
7 voting-age population" is defined in this notebook with the
8 phrase "total black population." So it's called "total black
9 voting-age population" in this notebook. The Census calls it
10 "any part black population."

11 So for the black voting-age population, they've
12 listed in their charts for the 2010 1st and 12th Districts --
13 they've used the 2010 Census "any part black." For the
14 population that they've listed for the 2001 Congressional
15 Districts, they've used "single-race black," and they've used
16 the 2000 Census. So they're comparing apples to oranges in two
17 different ways. Just as a minor fact, Your Honor, if we're
18 going to look at single-race black population, the
19 12th District was not drawn over 50 percent. It's slightly
20 below 50 percent.

21 So that's the importance of this notebook. Now,
22 there's another notebook I would like to hand up to the Court
23 if I might.

24 JUDGE OSTEN: Now?

25 MR. FARR: Yes, because it's part of my opening

1 statement.

2 JUDGE OSTEEEN: Okay.

3 MR. FARR: And I think it will help the Court. This
4 is Exhibit 126, Your Honor, and this is important to review
5 this with the Court now to give the Court the historical
6 perspective, and I've got extras if the law clerks would like
7 one.

8 JUDGE OSTEEEN: All right. Keep it to an overview,
9 Mr. Farr.

10 MR. FARR: What's that?

11 JUDGE OSTEEEN: Keep it to an overview if you can.

12 MR. FARR: I will, Your Honor.

13 I just want to flip through the tabs in this quickly,
14 Your Honor. Tab 1 is the original version of the 1st District
15 that was enacted in 1991. It was precleared by the Justice
16 Department, and the Justice Department objected to the failure
17 of the state to create a second majority-black -- or majority
18 minority district running from Charlotte to basically
19 Wilmington.

20 And it's important, Your Honor, that you understand
21 some terms for voting rights districts. A majority-black
22 district is where the black population is in the majority. A
23 coalition district is where whites are in the minority, there
24 is no majority white population, and blacks and, say, Hispanics
25 create the majority. Then there's something called a crossover

1 district. That's where whites are actually in the majority.

2 Counsel for the plaintiff referred to the 1st
3 District as a crossover district in his opening argument.
4 That's not correct. In none of these plans from '91 through
5 the present, the 1st District has never been a white crossover
6 district. Whites have never been in the majority in that
7 district. It originally started off as a majority-black
8 district in population and voting-age, and then I believe by
9 the time of the '97 Plan, the 1st District was a majority-black
10 in population and a plurality voting age. So make sure you
11 understand those terms. There's never been a majority-white
12 population in the 1st District that could vote as a black to
13 defeat the candidate of choice of the African-American
14 population.

15 So going through this notebook quickly, Your Honor,
16 under Tab 2 is the '92 Congressional Plan. This was the plan
17 that was the subject of the litigation in the *Shaw* case. The
18 12th District -- it's hard to read on this, but basically it
19 stretched from Gastonia to Durham along the interstate
20 highways. The 1st District was in Eastern North Carolina.
21 There was never a ruling in *Shaw* on the 1st District. There
22 was no plaintiff withstanding to challenge the 1st District, so
23 the Court in *Shaw* never ruled on the 1st District, but they did
24 declare the 12th District unconstitutional as illegal racial
25 gerrymandering.

1 So then if you turn to the next tab, Tab 3, Your
2 Honors, this was the plan that the state enacted after *Shaw* in
3 1997; and as you're looking at these plans, I want you to note
4 we heard from counsel about how horrible this district looked.
5 This district looks no different than any other versions of the
6 1st District that have ever been enacted. There was historical
7 precedence for this district, and having beautiful appearance
8 was never a criteria that any of the General Assemblies
9 followed. I mean, I really would like to have counsel get up
10 here and explain to me how any of these versions of the 1st
11 District passed the interocular test in a way that's better
12 than the 2011 1st District.

13 Now, the point on the '97 plan, Your Honor, is the
14 court -- the district court originally granted summary judgment
15 for the plaintiffs, and in that case the plaintiffs were
16 relying on registration statistics to prove that race was the
17 prominent motive. In the first *Cromartie* case, the Supreme
18 Court reversed and sent it back to trial, and they very
19 strongly indicated that voting patterns were more probative of
20 whether race was a predominant motive in registration
21 statistics, and that's because we have a large number of
22 unaffiliated voters, and also because everyone in this
23 courtroom knows that there's a lot of white Democrats that vote
24 Republican. So registration does not correlate with how people
25 vote. How people vote correlates with how people vote.

1 So when this was sent back down for trial, the 1st
2 District -- which I defy anyone to tell me how this is prettier
3 than the 2011 1st District -- this was found to be
4 constitutional and survived the *Shaw* compelling governmental
5 interest test. The Court found that it was compact. The Court
6 found there was racially polarized voting even though it was a
7 majority -- a minority-black voting-age population district. I
8 think there was only 46 percent single-race black voting-age
9 population in the 1st District under this plan.

10 The district court found the 12th District to be
11 illegal, again, based upon expert testimony involving
12 registration statistics. So it went up to the Supreme Court
13 again, and the Supreme Court found that registration statistics
14 do not correlate with the way people vote and that you can't
15 use registration statistics to prove a racial gerrymander. And
16 amazingly, that's exactly what Dr. Ansolabehere -- and I
17 apologize if I have not pronounced his name correctly. The
18 main point of his testimony is to use registration statistics
19 to prove that Congressional District 12 is an illegal racial
20 gerrymander after we've had two Supreme Court decisions saying
21 that's not a proper way to prove that case.

22 Your Honor, Tab 8 -- or excuse me -- Tab 4 was a plan
23 the General Assembly enacted after they lost in the district
24 court in the first *Cromartie* case. This plan was only used in
25 the 1998 election. It had a much lower black voting-age

1 population, but I think it was still well above 30 percent. If
2 we look at the evidence, we'll see that Congressman Watt, I
3 believe, had his closest election in '98 of all the elections
4 he's had when he was representing this district. When the
5 state won the *Cromartie* case, they reverted back to the '97
6 plan for Congressional District 12.

7 The next tab, five, is the Congressional Zero
8 Deviation Plan. This is the 2001 plan. Again, Your Honor, you
9 look at the 1st District. I would like to have someone tell me
10 how that passes the interocular test but the 2011 District
11 doesn't. And what's important to note, Your Honor, is that
12 nobody has ever argued until this case that racially polarized
13 voting does not exist where the First Congressional District
14 has been drawn.

15 In 2001, the state in its preclearance submission
16 admitted that they were drawing the 1st District as a Section 2
17 district as they had done from the beginning of this district.
18 There had never been a black congressional representative in
19 North Carolina until the 1st District and 12th District were
20 enacted.

21 Also, Your Honor, what this case is really about is
22 the *Strickland* case as far as it relates to Congressional
23 District 1. They -- on their charts here, Your Honor, they
24 haven't reported the actual black voting-age population for
25 CD 1 under the 2010 Census. If you look at the any party black

1 voting-age population for CD 1 under the 2010 Census, if you
2 look at the 2001 version, it's about 48.65 percent.

3 So the General Assembly was looking at the *Strickland*
4 case. There's no -- there is no dispute in the legislative
5 record that significant -- legally significant racially
6 polarized voting exists in this part of North Carolina. One
7 thing these map notebooks will show you, Your Honor, is that
8 all of the proposed legislative maps produced majority-black or
9 coalition districts in the very area where Congressional
10 District 1 was drawn. That was before the General Assembly.

11 They had two racial polarization experts who studied
12 racial polarization in these counties. A three-judge court in
13 *Dickson* looked at each one of these districts on an individual
14 basis to make it's findings, and so the whole issue is did the
15 General Assembly violate the law because they drew a district
16 slightly above 50 percent instead of the 48.65 percent district
17 that existed under the 2010 Census?

18 Now, counsel for the plaintiffs refers to the *Alabama*
19 case, and I want to say something about that briefly. The
20 *Alabama* case was a Section 5 case. *Alabama* drew their
21 districts that there was a legislative Section 5 case. The
22 district that was scrutinized by the Supreme Court had been
23 drawn to be over 70 percent black, and the state justified that
24 by saying, well, we decided that we had to keep districts at
25 this level because that's what they were previously.

1 Now, there's no Supreme Court case that says that,
2 and the 70 percent district, Your Honor, I would say is quite a
3 bit different than the 52 or 53 percent district which we're
4 talking about here in Congressional District 1, and the state
5 didn't adopt a mechanical rule that they came up with. *Alabama*
6 came up with a mechanical rule that they made up with no
7 Supreme Court basis.

8 North Carolina followed a rule that had been adopted
9 not only by the United States Supreme Court but also by the
10 North Carolina Supreme Court that if you're going to draw a VRA
11 district, it had to be over 50 percent because one of the
12 *Gingles* elements is there's no racially polarized voting unless
13 the blacks need a majority to defeat the white minority voters
14 who are voting in a bloc.

15 And so what's interesting is plaintiffs get up here
16 and say there's no racially polarized voting because whites are
17 crossing over in a crossover district, which it wasn't, to vote
18 for the black candidate. Well, if that's true, Your Honor,
19 then why did the plans proposed by the Legislative Black Caucus
20 and the NAACP and the Democratic leadership -- they all
21 produced plans that were 47 to 48 percent black voting-age
22 population. If there's no racially polarized voting anymore,
23 then we don't need this district at all. It can go away. We
24 can draw the district that -- 10 percent black population if
25 there's no racially polarized voting.

1 That's not what the plaintiffs wanted. They want the
2 Court to think that *Strickland* didn't happen, and they want to
3 shave the black population out of these majority-black
4 districts to create a better plan for Democrats because black
5 voters are highly correlated with voting for Democratic
6 candidates.

7 I also want to point out, Your Honor, that Tab 5 is
8 the Congressional Zero Deviation Plan with the 2000 Census. If
9 you flip through there, you'll see that the reports from the
10 General Assembly did not report the any part black voting-age
11 population. That would be on about page 3. It was the
12 single-race black population that was reported.

13 And if you go to Tab 6, Your Honor, that's the 2001
14 Congressional Plan with the 2010 Census. And if you look at
15 all the cases and the guidance from the Justice Department,
16 what the General Assembly was obligated to do was to compare
17 the benchmark plan using the 2010 Census, not the 2000 Census.

18 Oh, by the way, I do want to point out that we've
19 heard about the percentage of the vote that Congressman
20 Butterfield received, but what the plaintiffs don't want to
21 talk about is what's the actual margin of victory? So this
22 district was underpopulated by 97,500 people. Congressman
23 Butterfield had several elections where he won by less than
24 that amount. And so the question is what type of white voters
25 do you have to put back into the district to keep it at

1 98 percent? And that's exactly what the Supreme Court said the
2 states were not obligated to do under *Strickland*, that
3 legislatures and courts needed a judicially manageable
4 standard.

5 So, again, North Carolina didn't make up a mechanical
6 rule like *Alabama* did. They followed the US Supreme Court; and
7 while not binding on you, Your Honors, it is binding on the
8 General Assembly. The North Carolina Supreme Court said the
9 same thing.

10 The rest of these maps, Your Honor, are proposed
11 maps. There were only two proposed maps from other parties,
12 the Southern Coalition for Social Justice which represented a
13 coalition including the NAACP. That's under Tab 7. You can
14 see their 1st District there in yellow. Someone tell me how
15 that passes the interocular test while the enacted plan
16 doesn't, and they drew that district, I think, with a black
17 voting-age population of 47 to 48 percent. Again if, there's
18 no racial polarized voting, why isn't it at 25 or 28 percent?

19 They also drew that district, Your Honor, with -- so
20 that whites were in the minority. Nobody's ever proposed a 1st
21 Congressional District with a majority-white population. And
22 they also proposed a district with very -- nearly a majority of
23 the vote -- registered voters being black.

24 There are several versions of the *Dickson v. Rucho*
25 plan in this notebook, Your Honor. The plan was originally --

1 the 1st District was originally drawn into Wake County because
2 the cochair, Senator Rucho, and Representative Lewis may have
3 misunderstood Congressman Butterfield. For him, I have great
4 respect. But they thought that he had requested that the
5 district be drawn into Wake instead of Durham acknowledging
6 that the severe underpopulation of the 1st District could
7 require something like that, putting it into the RTP area to
8 make up the severe underpopulation.

9 The ultimate plan enacted by the General Assembly
10 took the district into Durham instead of Wake County. There
11 was historical precedent for that because the very first map we
12 looked at, the '91 Plan, which was precleared by the Justice
13 Department, had drawn the district into Durham. In fact, if
14 you look at the *Shaw II* case, the Supreme Court kind of
15 acknowledges that that district was a proper remedial district.
16 So there was historical precedent for that. There was also a
17 speaker at a public hearing who supported leaving the district
18 into Durham.

19 But again, Your Honor, what these maps show is that
20 it would be real hard to put these maps on a reality TV show
21 and have some judges decide which one of these maps is prettier
22 and then explain why, or why the 1st District is not pretty
23 enough. In fact, Your Honor, the 2001 First Congressional
24 District is more compact under -- or is only slightly less
25 compact than the 1997 1st Congressional District which the

1 three-judge court found to be compact. It's very, very close.

2 Just talking briefly about the 12th District, Your
3 Honor. That district survived the *Cromartie* litigation because
4 the state had drawn that using something called a vote
5 Tabulation District. A vote tabulation district is a piece of
6 census geography which the Census uses to do all sorts of
7 things. In North Carolina, vote tabulation districts are
8 pretty much identical to precincts with some few exceptions,
9 and precincts, of course -- the Court is familiar with what
10 precincts are. That's where people go to vote on election day.

11 The state in '97 and 2001 drew the 12th District to
12 be a strong Democratic district. The software that is
13 available to do that, you can look at the election results on
14 VTD level with no racial data being present. Dr. Ansolabehere
15 admits this in his deposition, that if you looked at election
16 results, you can't tell what the race of the voters are, and
17 that's exactly why the General Assembly in '97 to 2001 and in
18 2011 drew the 12th District based upon whole VTDs looking at
19 election results because they could not tell the race of the
20 voters.

21 The difference, Your Honor, is that the 2011 General
22 Assembly drew the 12th District to help Republicans in
23 adjoining districts. Dr. Ansolabehere has not looked at that.
24 He admits he hasn't looked at how the adjoining districts were
25 affected by the way CD 12 was drawn. And if you go back and

1 you check the *Cromartie II* case, that's fatal to his testimony
2 along with his somewhat inexplainable decision to rely on
3 registration statistics.

4 But even if they had proven -- if they could prove,
5 which they can't, that race was the predominant motive for
6 Congressional District 12, because -- and I'm quoting, I think,
7 Justice Souter if I'm right. It might be Breyer, but whoever
8 wrote the majority opinion in *Cromartie* -- because there's such
9 a high correlation between African-Americans and voting for
10 Democrats that sits over 90 percent. So if you're going to
11 make a more Democratic district, there has got to be more
12 African-Americans in it, particularly in that part of the state
13 where there's a high concentration of African-Americans.

14 And the Supreme Court in *Cromartie* said where there's
15 a high correlation between African-Americans and the party --
16 the candidate for who they vote for, even if you prove some
17 sort of indication that race was the predominant motive, the
18 plaintiffs have to offer a map showing how they could draw that
19 district in a way where race was not the predominant motive but
20 also achieving the political goals of the General Assembly.

21 There's a few other things that counsel said that I
22 disagreed with, Your Honor, but I've taken up enough time. At
23 the end of the day, Your Honor, this is just a fight over a
24 policy decision.

25 In 2001, Senator Miller drafted the 13th district in

1 a way that's just as strange looking as the 12th District
2 running from Wake County to Greensboro. He actually split up
3 part of Congressman Watt's 12th District in doing that. They
4 put Mecklenburg County into the 8th District to create a
5 district in which a Democrat could defeat Robin Hayes, which
6 happened. Those are all decisions under the cases that were
7 within the discretion of the General Assembly; and just the
8 same as those decisions were not illegal under any theory, what
9 the General Assembly in 2011 did also is lawful and is within
10 the discretion of the state's elected representatives. Thank
11 you very much.

12 JUDGE OSTEEEN: All right. Are the plaintiffs ready
13 to call their first witness?

14 MR. SPEAS: Yes, Your Honor. But before we call our
15 first witness -- Eddy Speas for the plaintiffs -- we would like
16 to move the introduction of our Trial Exhibits 1 through 144
17 previously identified in this matter. It is my understanding
18 that with one exception, all of these documents came from the
19 *Dickson* record, which is the subject of the stipulation that
20 the Court mentioned on Friday. With exception of one document,
21 I believe, there is no objection to the admissibility of the
22 documents. So we would at this point move the introduction of
23 Plaintiff's Exhibits 1 through 144.

24 Your Honors, I regret to tell you they're over there
25 in boxes. It's a pile. To make this case manageable for all

1 of us, as we call witnesses, we will give them a witness
2 notebook and share it with you and the clerks that will focus
3 on the particular exhibits that are important for those
4 witnesses. But the immediate matter on the table is we move to
5 introduce Exhibits 1 through 144.

6 JUDGE OSTEN: And all those documents, except one,
7 were taken care of in that stipulation filed -- like Document
8 69 or something like that?

9 MR. SPEAS: Document 70, and we would withdraw that
10 one.

11 JUDGE OSTEN: Okay, and use this one?

12 MR. SPEAS: Yes.

13 MR. FARR: I'm just questioning Mr. Speas. I think
14 Document 70 is the attorney-client privilege --

15 MR. SPEAS: Thirteen is the document that's got your
16 name on it.

17 MR. FARR: Okay. We have an attorney-client
18 privilege objection to Exhibit 13 then, Your Honor.

19 JUDGE OSTEN: So plaintiff -- so no objection to 1
20 through 12 and 14 through 144?

21 MR. FARR: If -- and Mr. Speas, I'm sure, has given
22 me the right number. If it's Exhibit -- what did you say, 13?

23 MR. SPEAS: To clarify, we will withdraw our
24 Exhibit 70 which was not in the record in *Rucho*. The only
25 exhibit to which there is an objection is Exhibit 13, which is

1 an email in which Mr. Farr is copied. To the extent there was
2 a privilege, we think it's been waived, so we would -- and it
3 is a part of the *Dickson* record.

4 JUDGE OSTEEEN: All right. So to clarify then,
5 Mr. Farr, no objection to 1 through 12, 14 through 69, and 71
6 through 144?

7 MR. FARR: Your Honor, there's one other -- there's
8 like an expert report from a group that we objected to on the
9 grounds of hearsay -- oh, okay. Yes. So the only objection we
10 have is to Exhibit 13. And, Your Honor, when you look at it, I
11 wasn't just copied, I was giving legal advice to people who
12 were working for the legislature.

13 JUDGE OSTEEEN: All right. Seventy is withdrawn. So
14 I'm going to -- 1 through -- now, I've got my numbers mixed up.
15 So 1 through 12, 14 through 69, 71 through 144 are admitted
16 without objection. There is a pending objection as to
17 Plaintiff's Exhibit 13. Unless there's a better procedure, to
18 keep us moving this morning, at present I'm going to admit it
19 subject to the objection, and we'll rule on the objection when
20 we have a few minutes.

21 MR. FARR: I was going to suggest something like
22 that, Your Honor. I was thinking if the Court would look at
23 that at some point in time and just tell us what you think,
24 that would be fine. You don't need to do it right at this
25 moment.

1 JUDGE OSTEEEN: All right. Let me get my numbers
2 right for my notes. 1 through 12 -- Plaintiff's Exhibits 1
3 through 12 are admitted. 14 through 69 are admitted.
4 Plaintiff's Exhibits 71 through 144 are admitted. Plaintiff's
5 Exhibit 13 is admitted pending a final determination of the
6 attorney-client privilege objection. Where are -- is that the
7 boxes over there?

8 MR. SPEAS: Yes, Your Honor. There's a box for each
9 of the judges and each of your clerks. But as I said, as a
10 witness is called, we will hand the witnesses notebooks that
11 contain those exhibits so that it will be manageable for
12 everyone hopefully.

13 JUDGE OSTEEEN: All right. Move forward then.

14 MR. SPEAS: Your Honors, thank you. We would then
15 call as our first witness Senator Dan Blue. And as Senator
16 Blue comes around, Your Honors, if I may approach the bench?

17 JUDGE OSTEEEN: Yes. Mr. Farr, will it be easier for
18 us to give you these back -- hold on just a second -- the
19 exhibits you've handed us now and let you hand them up again
20 when you're ready to introduce them, or just keep them up here?

21 MR. FARR: Whatever the Court prefers. You might
22 like to refer to them as the testimony is going forward.

23 MR. SPEAS: I have no objection to you keeping them.

24 JUDGE OSTEEEN: Okay. All right.

25 (Witness sworn by the clerk.)

1 MR. SPEAS: Your Honor, if I may approach the witness
2 and hand him the exhibits.

3 THE COURT: You may.

4 MR. SPEAS: Your Honor, in addition to using the
5 notebook, to the extent my technological skills permit this to
6 happen, I am hoping to put up on the screens the pertinent
7 parts of their testimony so that we will all be talking about
8 the same thing.

9 THE COURT: All right.

10 DANIEL BLUE,

11 PLAINTIFF'S WITNESS SWORN AT 10:04 a.m.

12 DIRECT EXAMINATION

13 BY MR. SPEAS:

14 Q Would you stated your name for the record, please?

15 A Yes. Good morning, Your Honors. My name is Daniel Blue,
16 Jr.

17 Q And would you tell the Court a little bit about where you
18 grew up and where you went to school.

19 A I grew up in Robeson County on a farm in Lumberton. After
20 graduating from the public schools in Robeson County, I
21 enrolled at North Carolina Central University and got a degree
22 in mathematics and from there I went to Duke Law School and
23 graduated from Duke Law School with a JD in 1973.

24 Q Have you been engaged in the practice of law since then?

25 A I have, since August 1973 when I got word that I passed

1 the bar exam.

2 Q And tell the Court just a little bit about your law
3 practice over those years.

4 A Out of law school, I was recruited to one of the bigger
5 firms in Raleigh. It was Sanford, Cannon, Adams and
6 McCullough, a firm founded by and headed by former Governor
7 Terry Sanford, and I practiced there for a while and then left.

8 I along with two other associates of my earlier
9 associates established a law firm in Raleigh, Thigpen, Blue &
10 Stephens, and since that time I have practiced with that firm
11 in one iteration or the other, but it's now Blue, Stephens &
12 Fellers in Raleigh, and so for the last 42 -- 42 plus years,
13 we've consecutively practiced general litigation but also
14 specializing in some subareas.

15 Q Did your work with former Governor Sanford inspire you to
16 get involved in political life yourself?

17 A It did. Growing up, it's not popular now, but I was
18 nailing signs up on light posts and trees when Sanford was
19 running for governor in 1960. I was a little boy. I was 10
20 years old, 11, and so when we joined the firm, one of the
21 requirements that Sanford had -- who at that time had become
22 president at Duke but was still involved in the firm, is that
23 everybody had to do something politically oriented, whether it
24 was work in your precincts or run for office or do various
25 things. Multiple people in the firm ran and served in various

1 public offices around Wake County and around the state.

2 Q And you yourself have served in public office, I believe?

3 A I was elected to the North Carolina House of
4 representatives in 1980, and I served continuously in that body
5 until 2001 when a slight fit of insanity hit me and I ran for
6 the United States Senate. I stayed out of the legislature from
7 2003 and went back in 2006 back to the House and went over to
8 the Senate in 2009.

9 Q And during your many years, I guess more than 30 years now
10 in the legislature, were you involved in various redistricting
11 decisions by the North Carolina General Assembly as a member of
12 the General Assembly?

13 A I have been since 1980, in November when I was certified
14 as a member of the House. I've somewhat been involved. In the
15 1981 session of the General Assembly, I was involved both in
16 Congressional Redistricting Committees and the House
17 Redistricting Committee, and was involved in the districts that
18 led to *Gingles*.

19 I was first elected county wide in Wake County and
20 ran county wide on several occasions. In '84 as a result of
21 *Gingles*, *Gingles* versus -- became *Gingles* versus *Thornburg*, but
22 as a result of that case, a single member district, a system of
23 single member districts were created in Wake County, and what
24 had been a six member at large district became six single
25 member districts, so I represented those.

1 In 1990, I was involved pretty intimately in the
2 redistricting process. I was elected Speaker of the House of
3 the session that began in 1991, so not only was I involved, I
4 appointed the redistricting committees, both the House
5 Redistricting and the Congressional Redistricting Committees
6 and was involved in many of the discussions regarding the 1991
7 Congressional Redistricting effort, and so I did that.

8 And then in 2000 I was still in the House, and I was
9 involved in the redistricting discussions, both at the
10 Congressional level as well as in the House redistricting, and
11 I was not involved in the redistricting committee. I was not
12 appointed to the Senate Redistricting Committee in 2011,
13 although I tried hard to be and had a guy who was a senator who
14 was going to resign so that I could serve there, but it was a
15 choice of the president pro tem of the Senate not to appoint me
16 to redistricting, but I was still involved in following the
17 hearings and listening to testimony and talking to people all
18 across the state regarding the redistricting effort.

19 Q Okay. Now, were you involved in the redrawing of
20 Congressional District 1 and Congressional District 12 in 1997
21 following the 1996 decision of the US Supreme Court in *Shaw v*
22 *Hunt*?

23 A I was.

24 Q Okay. And Senator Blue, I would ask you to turn to the
25 tab behind your testimony marked 73, which is Plaintiff's

1 Exhibit 73, and if our paralegal could put that up on the
2 screen. Is it there? Yes. Thank you.

3 Senator, is this the Section 5 submission made to the
4 US Department of Justice by the North Carolina General Assembly
5 in 1997 sending forth for preclearance the rewrite of those
6 Congressional 1 and Congressional 12 following the *Shaw*
7 decision?

8 A Yes, that's what it purports to be, and that's what it is,
9 typical cover letter sent with submissions.

10 Q And would you turn to pages 10 -- I'm sorry, nine and 10
11 of that document, and there's a section there entitled, "Effect
12 of Change on Minority Voters," is that correct?

13 A That's correct.

14 Q And is it fair to say -- I don't want you to get into read
15 it or anything like that. Is it fair to say in that section,
16 the North Carolina General Assembly explained to the US
17 Department of Justice the criteria that it was following and
18 the factors that it was considering in establishing those
19 districts?

20 A That is a correct characterization of it, and that is
21 consistent with typical explanations that had been given; but,
22 yes, it clearly says what the criteria is and what the factors
23 are that are being considered.

24 Q And would you actually read for us the first two sentences
25 of that section?

1 A "The General Assembly's primary goal in redrawing the plan
2 was to remedy the constitutional defects in the former plan.
3 Those defects were the predominance of race in the location and
4 shape of Districts 12, and perhaps in the location and shape of
5 District 1, and a failure of narrow tailoring."

6 Q And would you look with me to page 10 of that document,
7 the 6th line from the top, I believe, and is it accurate that
8 the legislature applying the criteria it described there and
9 weighing the factors it described there, set the voting --
10 black voting-age population for Congressional 1 in 1997 at
11 46.54 percent?

12 A That's -- that states it correctly, yes.

13 Q Okay. Now, was the '97 legislation precleared by the US
14 Department of Justice?

15 A Yes, it was.

16 Q Was any suit filed challenging that legislation under
17 Section 2 of the Voting Rights Act?

18 A There was no suit under Section 2 of the Voting Rights
19 Act. Yeah, as I recall correctly, there was not.

20 Q And that brings us to the 2001 redistricting. You were in
21 the legislature?

22 A I was.

23 Q And is it fair to say that the Congressional 1 and
24 Congressional 12 in the 2001 plan looked a fair amount like the
25 '97 versions?

1 A They did. They did.

2 Q And were those versions precleared by the US Department of
3 Justice?

4 A They were.

5 Q And was any suit filed during that decade challenging any
6 of those districts on Section 2 grounds?

7 A There was no suit filed against them on Section 2 basis;
8 and, in fact, Mr. Speas had the honor, I call it that, but when
9 I was Speaker, the challenges on the basis of Section 2 were --
10 basically it was the Justice Department objecting because we
11 were refusing to create a second Congressional District that
12 was race based.

13 Following the redistricting, it was pretty much
14 concluded that polarization and all of those issues existed in
15 the northeast and the east primarily, and you could draw a
16 district that was contiguous and somewhat compact, but with
17 respect to a second minority Congressional District, we made
18 the call, primarily with my urging, not to create a second
19 Congressional District and the United States Department of
20 Justice corrected us on that and made us go back and do it.

21 Q That was in '91?

22 A That was in '91.

23 Q Not 2000?

24 A Yeah, that's what I was saying all of that to say that
25 subsequent to that, I think that may have been the last

1 Section 2 challenge that was started out as Section 5. May
2 have been the last Section 2 challenge, other than leading up
3 to the earlier -- the '97 remapping.

4 Q I apologize for my confusing question. My question is
5 addressed to the 2001 plan. Was it precleared?

6 A It was precleared, and there was no lawsuit brought in
7 connection with it.

8 Q Now, that brings us to 2011. You were in the legislature?

9 A Yes, sir.

10 Q And you were not on the Redistricting Team Committee, but
11 is it fair to say you have an avid interest in redistricting?

12 A I do.

13 Q Would you provide the Court with an overview of this 2011
14 redistricting process as you saw it as a member of the Senate.

15 A As a sitting member of the Senate, again, there was -- I
16 think maybe it was in June or July sort of that there was this
17 discussion after the census data had been received where
18 Senator Rucho, who was the Senate chairman of both Senate
19 Redistricting and Congressional Redistricting, along with
20 Representative Lewis who was his counterpart in the House sort
21 of sprung them out, and said these are the things that we're
22 looking for in redistricting, and we're going to have public
23 hearings to see what the public reaction is to what they're
24 trying to do. That's sort of the background of how we started
25 talking about redistricting.

1 Q So it's accurate that first plans are presented by the
2 defendants here some time in mid-June and then they're enacted
3 by the end of July; is that --

4 A Yes, that's accurate.

5 Q And that's Congressional and State House and State Senate?

6 A That's right.

7 Q So it was a pretty quick process?

8 A It was a quick process, and there was -- for all intents
9 and purposes there was no real external input other than
10 they're presenting the map, and any tweaking or changes they
11 did among themselves. I mean, the -- there were no changes
12 that were adopted that may have come from anybody externally in
13 the sense of legislators not on the committee.

14 Q And what role did Senator Rucho and Representative Lewis
15 play in this process?

16 A Senator Rucho was the Senate Chair of Congressional as
17 well as Senate Redistricting. Representative Lewis was the
18 House Chair of House Redistricting and Joint Chair of the
19 Congressional Redistricting, and for the most part, the two of
20 them drew the maps -- not necessarily drew them, but supervised
21 the drawing of the maps, which were done external of the
22 General Assembly.

23 Q And do you know who actually drew the maps?

24 A Mr. Tom Hofeller.

25 Q Okay.

1 A I've learned since then drew the maps, and that's what we
2 learned during the course of the enactment of the plans.

3 Q Did Mr. Hofeller ever appear in the legislature and
4 explain how he drew the plans?

5 A No, sir.

6 Q Okay. Now, I think the historical record establishes that
7 Senator Rucho and Representative Lewis communicated their
8 criteria for developing these plans in a series of public
9 statements, is that correct?

10 A Yes, they on several occasions, both written and I think
11 in press conference form, indicated what they were looking for
12 and what they were looking at in trying to arrive at the
13 redistricting plans.

14 Q And did they explain in these statements and in other
15 places their understanding of their obligations under the
16 Voting Rights Act?

17 A Well, the thing that stood out is that they explained that
18 their obligation was to create voting rights districts, Voting
19 Rights Act districts pretty much throughout the state, both
20 legislatively and congressionally and that the criteria that
21 they had to adhere to was the 50 percent plus voting-age
22 population in each of the districts because that's what they
23 read *Strickland* to mean.

24 Q And, Senator, if you would turn to the tab in -- after
25 your notebook that's labeled five, it's in front of -- actually

1 Defendant's Exhibit 55 is a very nice collection of all the
2 public statements. Is the first public statement issued in
3 June, on June 17, 2001 --

4 A It is.

5 Q -- 2011?

6 A It is June 17, 2011, issued from them.

7 Q And could we put page 2 of that up on the screen?

8 THE COURT: Let me ask a question. So in the
9 notebook, the tab five is Plaintiff's Exhibit 5?

10 MR. SPEAS: I'm sorry, Your Honor, it got mislabeled.
11 It's Defendant's Exhibit 55 which we listed as, you know, we --
12 in our --

13 THE COURT: So the defendant/plaintiff labels may not
14 mean anything as we go along?

15 MR. SPEAS: Not in this particular instance. I'm
16 sorry for the confusion.

17 THE COURT: So it's Defendant's Exhibit -- I have on
18 the first page a deposition Exhibit 55, and then down at the
19 bottom I have a copy of a Defendant's Exhibit something. How
20 do these numbers --

21 MR. SPEAS: I thought it was 55. Maybe I'm confused.

22 MR. FARR: Your Honor, Defendant's 55 is some
23 testimony from a person in a public hearing, and our version of
24 what Mr. Speas was referring to is I think it's Defendant's --

25 THE COURT: So the sticker at the bottom that says

1 Defendant's Exhibit D-5.11 is the number for the record?

2 MR. FARR: Yeah, Your Honor. I think the defendant's
3 sticker for this case on the screen is in blue at the bottom.
4 The exhibit number at the top was the exhibit number in the
5 *Dickson* case. I think that clears it up.

6 THE COURT: Okay. So make sure, as you go along, do
7 the best you can to get me the right numbers.

8 MR. SPEAS: I apologize, Your Honor. It's
9 Defendant's Exhibit D-5.11.

10 THE COURT: Okay.

11 BY MR. SPEAS:

12 Q Senator Blue, now that I've not confused it too terribly I
13 hope, would you look on the second page of this exhibit which
14 is one of the public statements and read into the record the
15 second paragraph, beginning paragraph, the first two sentences
16 beginning, "In creating."

17 A Yes, sir. "In creating new majority African-American
18 districts, we are obliged to follow the decisions in *Stephenson*
19 1 and 2 as well as the decision by the North Carolina Supreme
20 Court and the United States Supreme Court in *Strickland versus*
21 *Bartlett*, with a cite. Under the *Strickland* decisions,
22 districts created to comply with Section 2 of the Voting Rights
23 Act must be created with a black voting-age population, BVAP,
24 as reported by the census at the level of at least 50 percent
25 plus one."

1 Q Okay. And would you look -- that was from the June 17
2 public statement?

3 A Yes, that was from the joint statement by Senator Rucho
4 and Representative Lewis dated or released June 17, 2011.

5 Q And I'm going to ask our paralegal to put up on the screen
6 the public statement dated July 12, particularly page 4. Do
7 you have the July 12 statement?

8 A Is that -- do you mean on page 4 of this document? Yes,
9 I'm looking at page 4 of the document.

10 Q Okay.

11 THE COURT: While we're stopped. We had an air
12 conditioning problem of all things this morning. The chillers
13 went down and GSA was slow. So to get us restarted, I
14 understand the problem has supposedly been taken care of, but
15 it's going to take a little while for the cooling to fix this
16 courtroom, and I apologize for that.

17 BY MR. SPEAS:

18 Q Senator Blue, could you look over at the screen. That's
19 the particular part of the July 12 statement I'm interested in.
20 Could you read that into the record, please.

21 A Sure. First, we have complied, as we must, with the
22 holding by the United States Supreme Court and the North
23 Carolina Supreme Court in *Strickland versus Bartlett*, with a
24 cite. These decisions require that districts drawn to insulate
25 the state from liability under the Voting Rights Act must be

1 drawn with a black voting-age population in excess of
2 50 percent plus one.

3 THE COURT: Let me make sure I understand where that
4 comes from. Where is --

5 MR. SPEAS: It comes from the July 12 public
6 statement which is a part of Defendant's Exhibit D-5.11.

7 THE COURT: Oh, that's page 2.

8 MR. SPEAS: I apologize for the confusion, 5.11. I
9 apologize for the confusion. This exhibit contains all the
10 public statements issued.

11 THE COURT: All right.

12 BY MR. SPEAS:

13 Q Now, were you in debates in the legislature where these
14 same statements were made by Senator Rucho?

15 A Was I in the legislature?

16 Q Yes.

17 A Sure.

18 Q And you heard these statements on the floor of the Senate?

19 A Well, this statement was from a July statement that he
20 made, but I've heard him make, yes, the statement because this
21 wasn't the only time. He said that multiple times.

22 Q Okay. Now, let me now ask you, Senator Blue, if you would
23 look at the July 1 public statement which is a part of
24 Defendant's Exhibit D-5.11 at page 3.

25 A I have that.

1 Q Did you -- do you have that in front of you?

2 A I have page 3, yes.

3 Q Okay. And if you would look at page 3 of that statement,
4 would you -- could we put this up on the screen, please.

5 Senator Blue, if you would look at the screen. Is that up?

6 I'm sorry, Your Honor, I'm having a hard time seeing. Your
7 Honor, I've managed to completely confuse myself. Let's just
8 skip by that for the moment.

9 Let's look, Senator, at exhibit -- Plaintiff's
10 Exhibit 139 which is in front of you under tab 139.

11 A Got it.

12 Q Is that a transcript of the July 25, 2011 session of the
13 North Carolina General Assembly?

14 A It is.

15 Q And would you look at pages 8 and 9, particularly at the
16 bottom of page 8, at line 19, the paragraph beginning
17 "however."

18 A I got it.

19 Q Okay. Would you read that into the record, please.

20 A It says, "However, we must alter the 2001 version of the
21 first district because of two flaws. First, the current first
22 district is underpopulated by over 97,000 people. Secondly, it
23 does not include a majority-black age voting - black voting-age
24 population, better known as BVAP, as required by Section 2 of
25 the Voting Rights Act, see *Strickland* and *Bartlett* -- *Bartlett*

1 excuse me. Thus any revision of the first district requires
2 the addition of over 97,000 people. Also, the added population
3 must include a sufficient number of African-Americans so that
4 the first district can re-establish as a majority-black
5 district.

6 Prior to our release of the Rucho/Lewis 1, we
7 discussed both of these problems with Congressman Butterfield.
8 We believe that he understood and agreed that his district
9 would be drawn in either Wake or Durham County to cure the
10 district's equal population and voting rights deficiencies. We
11 understood that Congressman Butterfield preferred that his
12 district be drawn in Wake instead of Durham. We also discussed
13 with Congressman Butterfield that drawing his district in Wake
14 County may result in the withdrawal from his district of one or
15 more counties covered by Section 5 of the Voting Rights Act."

16 Q Okay. Thank you. And when the General Assembly enacted
17 the Congressional Plan in July, did Congressional District 1
18 contain more than 50 percent voting-age -- black voting-age
19 population?

20 A The plan finally enacted did.

21 Q Okay. And let me go back just a moment to your district.
22 You were in Senate District 14, I believe?

23 A I am in Senate District 14, yes.

24 Q And tell the Court what Senate District 14 was like in
25 2010 in terms of shape and in terms of voting -- black

1 voting-age population.

2 MR. STRACH: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. STRACH: It appears that the line of questioning
5 is going into legislative districts. This matter seems to be
6 focused on Congressional Districts, so we'd simply note
7 objection, Your Honor, to testimony from Senator Blue regarding
8 Legislative Senate District 14.

9 THE COURT: Relevance of the statement?

10 MR. SPEAS: It illustrates the application of the
11 50 percent plus one rule.

12 THE COURT: Just a second. Is it for illustrative
13 purposes only, in your opinion?

14 MR. SPEAS: Yes.

15 THE COURT: Yes, sir?

16 MR. STRACH: We wouldn't have any objection to it for
17 illustrative purposes.

18 THE COURT: No objection?

19 MR. STRACH: For illustrative purposes.

20 THE COURT: For illustrative -- hold on just a
21 second.

22 (Discussion among judges.)

23 THE COURT: We'll allow it for illustrative purposes.

24 MR. SPEAS: Thank you, Your Honors.

25 BY MR. SPEAS:

1 Q Senator Blue, briefly, tell the Court what your district
2 was like in 2010 before it was redrawn in terms of shape and
3 population.

4 A Yeah, my district, as the other districts that later
5 became the majority minority districts was well under
6 50 percent black, not only voting-age population but black
7 population, and the idea that Senator Rucho expressed in the
8 press release that you saw earlier as well as in his statement
9 on the floor was that any district drawn to satisfy the
10 requirements as he perceived of Section 2 of the Voting Rights
11 Act had to be more than 50 percent plus voting -- black
12 voting-age population.

13 So my district was somewhere down in the low 40s, 40,
14 41, 42 at most and had consistently been that level. It had 70
15 or 80,000 people too many in it, and by the time we did 2010
16 census; but, anyhow, my district is illustrative of what
17 happened to the other districts that had black senators in that
18 it was taken from roughly 40, 42 percent black population,
19 black voting-age population, to in excess of 50 percent, and
20 that was the same -- same thoughts that he had expressed about
21 the Congressional Districts, that even though they were below
22 50 percent, that he was going to take them above 50 percent
23 black voting-age population.

24 Q And at some point in the legislative process, you posed to
25 Senator Rucho the question, what is it about the Voting Rights

1 Act that requires you to increase the black voting-age
2 population in districts that are less than 50 percent that are
3 already electing African-American candidates?

4 A He said it was his understanding and his belief that he
5 had to take them all beyond 50 percent because *Strickland*
6 informed him that that's what he's supposed to do.

7 Q Now, let me ask you, Senator, to do this for me. We've
8 talked about the 2001 plan that was precleared by US Justice,
9 or plans that were precleared, and we talked about the 2011
10 plan. The 2001 plan had how many majority African-American
11 voting-age population districts, the 2001 plan?

12 A I believe the 2001 plan had nine.

13 Q No, I'm sorry. Congressional Districts?

14 A Congressional District. The 2001 plan had two districts
15 that had black Congress people representing them. Neither of
16 those districts was over 50 percent black voting-age
17 population.

18 Q And the enacted plan had how many districts over
19 50 percent?

20 A In 2001? Oh, in 2011.

21 Q Yes.

22 A The 2011 plan took both districts in excess of 50 percent
23 or at least attempted to take both districts in excess of 50
24 percent black voting-age population.

25 Q And how many districts, Senate districts, in the 2001 plan

1 had a majority-black African-American voting-age population?

2 A Nine Senate districts.

3 Q No in 2001?

4 A 2001? 2001 had no State Senate districts. However, black
5 voting-age population in excess of 50 percent. The range ran
6 from I think the high 20s, even lower than that in a district
7 that was represented by a black Senator in Alamance County, but
8 the 2001 plan, or three plan as finally enacted, had no North
9 Carolina Senate districts that had black voting-age population
10 above 50 percent.

11 Q And the 2011 Senate plan had how many majority --

12 A It went from zero in the 2003 final plan to nine in the
13 2011 plan. So zero in 2003 had over 50 percent -- had
14 50 percent plus black voting-age population, nine following the
15 2011 redistricting had 50 percent black voting-age population.

16 Q And on the House side, in 2001, do you recall
17 approximately how many House districts had majority-black
18 voting-age populations?

19 A The House had -- it was either 10 or 11 black voting-age
20 population districts in 2001 and 2003 after the redistricting
21 effort, and the 2011 plan, the House had 23 black voting-age
22 population districts.

23 Q That --

24 A That were over 50 percent.

25 Q So let me see if I've got this right and to summarize.

1 The Senate plan went from no majority-black voting-age
2 population district in 2001 to nine in 2011?

3 A That's correct.

4 Q The House went from 10 majority African-American
5 voting-age districts in 2001 to 23 in 2011?

6 A That's accurate.

7 Q And in the Congressional side, the 2001 plan had no
8 Congressional District with a majority voting-age population
9 black; the 2011 plan had two?

10 A That's correct.

11 Q Now, did you vote on all three of these plans?

12 A I voted on all three of them, yes.

13 Q And how did you --

14 A No, no, no, I voted on two of them. I couldn't vote for
15 the House plan.

16 Q Okay.

17 A I could at the end --

18 Q How did you vote?

19 A I could at the end, but I voted -- I voted no on all of
20 them, and every other black Senator voted no on all of them,
21 all three plans. And the reason I made the comment earlier is
22 typically the Senate affirms what the House does its plans, and
23 the House affirms what the Senate does to its plan, and then
24 both fight about the Congressional Plan.

25 But in this case all of the African-American

1 senators, and there were nine at the time, nine who came from
2 these non-majority-black districts, all voted against the plan.
3 No, there may have been more than that at the time; but,
4 anyway, all of them voted against it, and all of the House
5 members voted against all three plans, the black House members.

6 Q All of the African-American members of the Senate in 2011
7 voted against the plan that was finally enacted for the Senate
8 and the plan finally enacted for Congress?

9 A Yes.

10 Q Okay. Would you take a minute and just tell the Court why
11 you opposed these plans that created all these new for the
12 first time majority African-American voting-age population
13 districts.

14 A Well, there's several reasons, but the most obvious was
15 that this was seen among those who had been elected to
16 represent all of the people in their districts, not just the
17 black citizens in their districts, it was seen as a
18 balkanization of the electorate, and basically a ghettoization
19 of the black elected officials.

20 It was creating districts where they were not needed
21 and where they were not justified to create a majority-black
22 district in Wake County, and this was part of a discussion with
23 the Congressional debate as well. A county that since the
24 passage of the Voting Rights Act shortly thereafter had
25 consistently elected minorities in county-wide positions; a

1 county which had two of the four constitutional officers, the
2 Register of Deeds and the sheriff, two of the four county
3 constitutional officers elected county wide were minority; a
4 county that had elected judges county wide and in districts
5 since following the passage of the Voting Rights Act, a county
6 that had elected African-Americans at every level of county
7 Government to the legislature, as well as other places, school
8 board, and everything else; a county that had elected three
9 African-Americans at the same time in -- from 2000 to 2010 to
10 the House of Representatives, although there was only one
11 majority minority district, and it was not over 50 percent, but
12 had elected African-Americans in districts that were under
13 20 percent African-American, a second district that was under
14 30 percent African-American, that there was no indication that
15 you needed to draw districts that were over 50 percent
16 African-Americans in order to achieve the purposes of the
17 Voting Rights Act; and, quite frankly, it was offensive to most
18 of those of us who represented the people of our districts and
19 especially those of us who were African-American.

20 It was acting as if the Voting Rights Act had
21 determined that things would go in a negative direction, that
22 you would create these districts, and they would sit there
23 forever, that they would not grow with time, that they would
24 not expand, that they would not basically do what we felt the
25 Voting Rights Act was designed to do, and that is eliminate the

1 need for race -- race use in any kind of districting or any
2 kind of plan as we basically made the promise of America apply
3 equally to everybody.

4 And this plan was seen as basically reversing all of
5 that, ignoring the last 50 years of history and acting as if
6 Wake County, which had a record that I just described to you, I
7 was elected county wide to the General Assembly, we had a
8 senator elected county wide, but that Wake County had the same
9 history or the same proclivities as some of the other counties
10 where remedial action was necessary. That was an insult not
11 only to the black citizens of Wake County, but to everybody in
12 Wake County, including the white citizens who had been told
13 that they were racist, that they voted in a polarized fashion,
14 when the record showed they did not. When the record showed
15 they voted in coalition forms, voted for candidates, and that
16 there was no need to have special privileges and special
17 districts set aside that became -- I called them, I think in my
18 floor debate, townships like existed in South Africa.

19 MR. SPEAS: Thank you, Senator Blue.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross-examination?

22 MR. STRACH: Yes, Your Honor, Phil Strach for
23 defendants.

24

25

1 CROSS-EXAMINATION

2 BY MR. STRACH:

3 Q Good morning, Senator Blue.

4 A Good morning, Phil.

5 Q Good to see you again.

6 A Same here.

7 Q Senator Blue, you just had a discussion about Wake County.
8 If the legislature had drawn a Senate district for you that was
9 in the 10 to 15 percent black voting-age population range,
10 would you have agreed to that?

11 A I probably would have, yes.

12 Q Do you believe --

13 A I got elected in a district initially that was less than
14 15 percent black voting-age population.

15 Q Do you believe that a black candidate other than yourself
16 could be elected in that district?

17 A Yes, I just indicated that county wide we elected a
18 sheriff when less than 15 percent of the county population,
19 black voting-age population -- when less than 15 percent of the
20 county's black voting-age population was African-American.

21 We elected county commissioners. We elected judges
22 county wide in districts that had less than 15 percent
23 registered black vote. The vote in Wake County now is
24 approximately 23, 24 percent African-American, reflects the
25 state population pretty much; and, again, consistently, that

1 county has elected African-Americans.

2 There is no study that I'm aware of that I have seen,
3 and I've followed this for the last 30 plus years, that shows
4 that degree of polarized voting in Wake County that would
5 justify the creation of these super majority minority
6 districts, a super saturated minority districts.

7 One of the things that, Phil, that distinguished Wake
8 County from some of the other urban counties is that most of
9 the black voting-age population and the black population did
10 not live in just one section of Raleigh, of Wake County, and so
11 part of the difficulty in drawing districts, if you determine
12 that you're going to make a certain percent black, you've got
13 to have all these strange appendages all over your maps because
14 you've got to reach into neighborhoods that are not
15 majority-black, but they've got majority-black pockets in them.
16 And so you reach all over the place getting pieces of votes
17 through neighborhoods without regard to other things that unify
18 those neighborhoods.

19 So, yeah, I would have voted for a plan that
20 naturally divided Wake County on some basis. I think it would
21 have been tough to draw a plan that did not have at least a
22 House district or a Senate district with over 25, 30 percent
23 minority population if you kept together the natural area in
24 southeast Raleigh, but that that would have been the natural
25 thing. You could have drawn a district 30 percent black

1 voting-age population I think that would have been acceptable
2 to most people.

3 Q Do you -- were you aware of alternative Legislative and
4 Congressional Plans proposed by the Legislative Black Caucus.

5 A I'm aware of two or three other groups that proposed
6 plans.

7 Q Did you have any input on the -- the alternative maps that
8 were proposed by the Legislative Black Caucus?

9 A The only influence I had was to convince people that it
10 made no sense to pack all African-Americans in as few of
11 districts as possible. I didn't have any plans on the final
12 proposal that they sent forth. In fact, I disagreed with some
13 of the districts that they proposed to create.

14 Q Were you aware that the Legislative Black Caucus proposed
15 House districts -- or at least one House district in Wake
16 County that was majority-black?

17 A Yeah, it was a continuation of old House District 33, I
18 believe; and, again, as I say, if you go into southeast Raleigh
19 which is a traditional African-American area of town, you can
20 come up with 40,000 African-Americans without having contorted
21 districts, without having strange appendages. So if you just
22 take that population, you'll end up with a district that's
23 close to 50 percent African-American.

24 But what the legislature did, for the first time they
25 created two African-American House Districts in Wake County

1 that have strange looks to them; and, again, in light of the
2 fact that Wake County had elected three African-Americans in
3 districts that were far less than the 30, 40 percent
4 African-American black voting-age population.

5 Q Now, you're talking about blacks that have been elected
6 county wide, correct?

7 A County wide and district wide, no, no, no. They were
8 elected in specific districts. There was one district in the
9 Knightdale/Raleigh area that had 29 percent black population,
10 black voting-age population, that consistently elected a black
11 woman. There was another district in northwest Raleigh that
12 elected and reelected Ty Harrell. That district was less than
13 20 percent African-American. All of that was done and occurred
14 between 2001 and 2010.

15 Q Now, the candidate in the district that you just mentioned
16 that had 29, 30 percent in the Knightdale area, who -- was that
17 Linda Coleman?

18 A Linda Coleman won reelection in that district.

19 Q How many times?

20 A She ran -- again, I was out of the House from 2003 to
21 2006. Linda was there when I got back, and she ran -- she was
22 re-elected -- I think she was re-elected two times, and then
23 she chose to join the cabinet of Governor Perdue after Governor
24 Perdue was elected in 2009.

25 Q Right. And do you know who won that district after she

1 left that district?

2 A Darren Jackson. I don't think there was a black opponent.
3 If it was, it wasn't a serious one.

4 Q But he's white, correct?

5 A Darren is white, yes.

6 Q Now, Senator Blue, you said that you were in the North
7 Carolina House from 1980, and I think you were there through
8 December 31 of 2002?

9 A That's correct.

10 Q Is that correct? So you were consistently elected from
11 either a multimember district or your single member district
12 from 1980 to -- to through 2000, is that correct?

13 A That's correct.

14 Q And so you were in the State House when the 2001
15 Congressional Plan was enacted?

16 A I was.

17 Q And you were on the redistricting committee?

18 A I was. I was.

19 Q All right. So --

20 A I was traveling pretty extensively as a said. I was
21 running for the -- in the primary for the United States Senate,
22 so I have to admit that I probably didn't put as much time in
23 the legislature as I should have, but I paid attention to
24 redistricting.

25 Q But you were on the redistricting committee, so you had a

1 direct voice in the drawing of those maps, correct?

2 A Yep, sure, as well as other members. It was an open
3 process. Not only those on the redistricting committee, but
4 members of the House had pretty free rein to say what they
5 believed, and everybody reviewed their own districts.

6 Q Do you remember how many times you ran in multimember
7 districts at the beginning?

8 A Primary and general elections?

9 Q Just -- yeah, primary and general.

10 A I ran in multimember districts in three or four primaries,
11 I think, and two general elections.

12 Q All right. And then that's after the *Gingles* litigation
13 that then went to a single member district?

14 A Yes, after *Gingles* and after '84 it became a single member
15 district.

16 Q All right.

17 A And it became a single member district not -- because the
18 proposal that had been made after *Gingles* was handed down was
19 that we create single member districts in the urban areas,
20 including those that were not necessarily affected by *Gingles*.
21 For example, in Durham County, the *Gingles* decision determined
22 that there did not have to be any majority minority district.
23 *Gingles* specifically said Durham did not have polarized voting,
24 but decision was made in the General Assembly so that these
25 districts wouldn't be isolated and stand out as different, that

1 if we were going to create single member districts in these
2 urban areas, that all of the districts in the urban areas would
3 become single member districts and we would totally dismantle
4 the multimember districts that would remain; but that, again,
5 was to make sure that these majority-black districts that were
6 deemed necessary by *Gingles* were not sort of looked at as again
7 isolated and ghettoized districts.

8 Q So in a multimember district, Senator Blue, you said that
9 Wake County was a six member multimember district, so six
10 seats -- voters could vote for six seats at one time county
11 wide, is that correct?

12 A That's correct.

13 Q And so in that situation a voter -- there might be several
14 white candidates, there might be several black candidates
15 within that pool of how ever many candidates were running,
16 correct?

17 A That's right.

18 Q So in that situation in a multimember district, voters
19 have the option of voting both for white candidates and black
20 candidates at the same time, is that correct?

21 A That's correct.

22 Q All right. And in a single member district, you have to
23 vote for one or the other?

24 A That's correct.

25 Q All right.

1 A Unless both of them are the -- you know, two blacks or two
2 white candidates.

3 Q Right. And in a multimember district, are you familiar
4 with the concept of single shop voting?

5 A Sure.

6 Q What is single-shot voting?

7 A Single-shot you can vote for one or fewer than all of the
8 available slots that you have that you could vote in.

9 Single-shot voting was a technique perfected primarily in the
10 '50's and '60's as a way to get over these districts. I don't
11 defend multimember districts, but I'm saying over time you
12 learn how to adapt and you make whatever you have work for you.

13 So single-shotting was -- single-shooting was one of
14 the techniques that was developed to elect minorities in
15 districts where minorities hadn't been elected so that you
16 didn't have to vote, say, for all six. You could vote for your
17 top three candidates, and the probability that one of them or
18 two of them or three of them would win was much greater if you
19 didn't spread your votes to the others.

20 Q All right. So that was one way in the multiple member
21 system that black voters could overcome the effects of racially
22 polarized voting, is that correct?

23 A One way, yes.

24 Q So -- because otherwise you might have a sizeable compact
25 population of black voters who would otherwise be submerged

1 county wide, is that correct?

2 A If there's a sizeable enough bloc, and you got contiguous
3 compact base, I think it's pretty clear that you ought to draw
4 the district that would be natural in that population.

5 Q All right. Now, and once you -- once you went over to a
6 single member district, particularly when you were in the State
7 House, you were running in and winning in just a small portion
8 of Wake County itself, correct?

9 A Yeah, much smaller portion, part of the county rather than
10 the full county.

11 Q Right. And so is it fair to say that the vast majority of
12 the elections you won in in the State House were in that
13 smaller portion of Wake County?

14 A Oh, sure. I mean, I ran from '84 through 2000 in that
15 smaller district, mostly without primaries, but generally in
16 the general election I had very little opposition and -- in the
17 primary and, quite frankly, not a lot in the general elections.

18 Q Right. And do you think part of that is because after
19 you'd won several elections, you had the benefits of
20 incumbency?

21 A Well, I'd like to think that it was because of how I
22 represented the district. I don't think that longevity in and
23 of itself necessarily commands that you keep holding a
24 position. I'd like to think that the citizens of the district
25 thought that I represented them adequately and well.

1 Q Sure, but the longer you personally represent the district
2 and do a good job, the more the voters get to know you
3 personally, correct?

4 A Yeah, but I would add that following that logic you'd
5 rarely get an incumbent defeated, and it happens more often
6 than you think; and, in fact, one of the prime examples is one
7 of these minority districts in Charlotte, where a sitting black
8 Senator -- where a black Senator-to-be defeated one of the most
9 powerful white legislators in the Senate in a district that had
10 only 28, 29 percent black population.

11 Malcolm Graham beat Fountain Odom down there, and
12 that's one of the districts, again, that had this same logic
13 applied to it, that any time you created a majority-black
14 district it had to go over 50 percent, which is the same logic
15 that was applied with respect to the Congressional
16 Redistricting.

17 Q But, Senator Blue, you agree with me that over time the
18 name recognition that you gathered in your district certainly
19 helped you win elections?

20 A Oh, I concede that it has value, yes.

21 Q All right.

22 A Before social media it had a lot more value than it does
23 now.

24 Q And, Senator Blue, you brought up your Senate district,
25 and since you brought it up, I want to make sure I clarify a

1 few points about it. Before 2011, you're in Senate District
2 14, correct?

3 A That's correct.

4 Q And it's in Wake County?

5 A Yes.

6 Q Before 2011, your Senate District 14 did, in fact, have a
7 total minority population, black plus other minorities,
8 exceeding 50 percent, is that correct?

9 A It has -- again, it started downtown, and it went out all
10 of Eastern Wake County, and in that area, there was a pretty
11 sizeable Hispanic population. I don't know what the percentage
12 was, but I think that the black and Hispanic population, most
13 of which was not registered to vote, by the way, may have -- it
14 did not exceed 50 percent, I don't think. I mean, I didn't
15 study close with stuff like -- but I don't think it exceeded
16 50 percent.

17 Q But you don't think -- your district before 2011 was
18 certainly not majority white, was it?

19 A I think it was majority white.

20 Q Do you recall testifying in the *Dixon v. Rucho* state court
21 proceedings?

22 A I do.

23 Q Do you recall testifying about this point about whether
24 your district was minority 50 percent plus before 2011?

25 A I recall -- I don't know what I said about it. The

1 district is what it is; but, again, I don't think that it is
2 majority minority. I know it's not majority minority black
3 voting-age population.

4 Q If you testified then that you believe that your district
5 before 2011 had minority population exceeding 50 percent, would
6 you be willing to stand on that assuming that's what the record
7 says?

8 A That my district had more than 50 percent black
9 population?

10 Q Black plus Hispanic?

11 A It may have. I mean, again, I don't -- I don't know
12 exactly what the black plus Hispanic plus Asian population was
13 in my district.

14 Q All right.

15 A But, again, the important thing is I know, because I had
16 studied it, it did not have a majority-black voting-age
17 population, and I stand by my statement that the black
18 population, black voting-age population, was somewhere in the
19 low 40s, 40, 42 percent. And, you know, forgive me, that's not
20 the most important thing to me in representing the district,
21 because I figured I represented all 190,000 people in the
22 district, not just 80, 90,000 who may have been
23 African-American.

24 Q I understand, but you have been involved in redistricting,
25 you understand the important distinctions between crossover

1 districts, say, and coalition districts, is that right?

2 A Yeah, I understand that.

3 Q And so you -- would you agree that if your district was
4 over 50 percent minority of all minorities, then that was a
5 coalition district not a crossover district? Would you agree
6 with that?

7 A Well, it depends on whether they were coalescing. It
8 depends on -- I mean, I think that the definition of a
9 coalition district is a district where there's evidence that
10 people are coalescing, that they're coming together for a
11 common purpose, not some predetermined description of it, at
12 least that's how I define a coalition district, and that's what
13 we tried creating in Wake County from about 1976 to 1980
14 forward.

15 Q So you were trying to create coalition districts?

16 A Coalitions between people of different viewpoints,
17 different races, different origins so that we were looking for
18 a common way to address the problems in the district so that
19 race played no issue in how you address the problems, but you
20 focused on dealing with the issues that you ought to as an
21 elected official.

22 Q All right. So what in -- what is -- in your
23 understanding, what is the difference between a crossover
24 district and a coalition district?

25 A I don't know whether those are terms of art the way you're

1 using them, but a crossover district I look at as a district
2 that was involved in *Strickland*. *Strickland* was a crossover
3 district because even though it was not a majority-black
4 district, historically white voters had crossed over and voted
5 for the black representative, and they had two or three in the
6 cycle from 2001 until *Strickland* was decided, two or three
7 black representatives.

8 And although it was not majority minority,
9 consistently the white vote would go for the African-American
10 candidate, whether primary or general election. That's what I
11 considered a crossover district, and that's what I thought that
12 *Strickland* was addressing.

13 Q All right. Do you know if any of the single member house
14 districts you ever ran in were majority white district of the
15 total population or voting-age?

16 A You mean other than the at large district that I ran in?

17 Q Right.

18 A In the '90s, because of the intervention of the Justice
19 Department in creating these districts initially, I think
20 initially pre-district, and I think it was 33 in the '90s, the
21 numbers changed in 2000. It may have been 13 or something, it
22 may have been another district number, but when they were first
23 created, the directive was to create all of these districts
24 somewhere, and the number that the Justice Department felt
25 comfortable could elect African-Americans.

1 For example, there was a district created in
2 Northeastern North Carolina where there's a pretty rich history
3 at the time of polarized voting that the Justice Department
4 rejected because it did not have in excess of 68 percent black
5 population in it, but that number over time came down, and the
6 Justice Department started accepting smaller numbers as one
7 would hope it would if the Voting Rights Act was having the
8 effect that it was designed to have.

9 And so the same thing may be true with respect to how
10 the initial majority minority districts were created in the
11 urban areas, in 1984 as well as in 2000 -- I mean, in '91 and
12 2000 I do know that there was a big push made in '91 to create
13 20 some majority minority districts, and we resisted that and
14 refused to do it, and that's why I think ultimately you had 10
15 or 12 majority-black districts with more than 50 percent black
16 voting-age population.

17 Q I appreciate that, Senator Blue. My question is actually
18 much more simple than that. It simply is do you know whether
19 you've ever run in Wake County in a House, a single member
20 House district, that was majority white?

21 A Majority white?

22 Q Yes.

23 A I think I probably have. Again, I don't know what the
24 final makeup -- how the district changed from 2000 -- from 1991
25 to 2000, but understand that Wake County -- Wake County's

1 population and the city of Raleigh's population increased
2 almost exponentially. So a county went from three, 400,000
3 people to a million by the time we got around to 2010, so my
4 district was growing and it was a downtown district and
5 downtown was gentrifying and whites were moving in.

6 The suburbs that were developing around it had mostly
7 whites moving in, so the district could have been
8 majority-black again -- I mean, majority white. I simply did
9 not study it. I may have looked at it when we finally went
10 back to redistricting as to what it finally looked like; but
11 so, yeah, during that period, it probably was majority white at
12 some point.

13 Q But you haven't looked at any data to confirm that?

14 A Gut feeling tells me that it was majority white at
15 different junctures; but, again, when you're getting 70,
16 80 percent of the vote, you don't go down to drill down to see
17 where polarized voting is occurring, and that's the kind of
18 result that we were getting in my House district and in the
19 Senate district. Not only me, but at districts that were less
20 than 50 percent majority-black majority.

21 The black candidate was getting in excess of
22 60 percent of the vote, and sometimes up towards 70 percent of
23 the vote and the general election; and so, again, you were not
24 so mindful as to who made up certain segments. If you ask me
25 whether I routinely won in majority white precincts, because

1 the voting tabulation districts were the precinct levels, I
2 consistently won, and so did other black candidates, in Wake
3 County in majority white precincts.

4 MR. STRACH: Your Honor, I have another couple lines
5 of questions.

6 THE COURT: Is now a good time to take a mid-morning
7 recess?

8 MR. STRACH: Yes, Your Honor.

9 THE COURT: All right. Let's take a 15-minute
10 recess. Before we walk out, let me see counsel up here at the
11 bench. We can do it with two, Farr and Hamilton will be fine.

12 (Bench conference as follows:)

13 THE COURT: I'm speaking for myself at this point.
14 I'm going to talk to these other judges about it over the
15 recess. During the course of the opening statements, which I
16 thought overall were very well done, there was some argument
17 back and forth, a comment about Eastern Bloc stuff and then was
18 responded to in kind, shall we say, during the -- and I'm
19 afraid that kind of set a stage for what I perceive to be --
20 these other judges may disagree with me -- questions and
21 answers that are running the gamut from factual to political
22 opinion to political argument in some respects.

23 And I'm not criticizing the witnesses. This is a
24 very difficult case to stay out of areas of political opinions
25 and views, and I'm not suggesting at this point that it should

1 stop. But my observation is that as we proceeded through
2 opening statements and have heard testimony from the first
3 witness, both through opening, the questions and various other
4 things, we've got, at least in my mind, we've got a mix.

5 And, again, these other judges may overrule me and
6 disagree with me on this, but we've got kind of a mix of
7 factual information, commentary on legal analysis of cases and
8 various other things, which are important part of it, but I
9 want to make sure in terms of the questioning that we stay
10 focused on, as I see it, at least the factual part of this
11 trial.

12 I don't want this thing to drag on to four days
13 because we've got a lot of commentary that may or may not be
14 helpful to get us to the final end result, and at least in my
15 mind the way to avoid it is make sure on both sides that the
16 questions are appropriate and tailored to elicit an appropriate
17 response. The more open-ended they are, the more inviting.

18 I say the whole thing again, these judges may
19 disagree, I'll update you after the break, but I don't want to
20 let the opening statement portion having set the tone for a lot
21 of commentary to come in response to what was heard during the
22 course of the opening statements, if that makes any sense.

23 I'm not asking you to do anything at this point, just
24 think about it. I'll talk to these other judges and see where
25 they fall on this, and then we'll go from there.

1 MR. HAMILTON: Thank you, Your Honor.

2 MR. FARR: Thank you, Your Honor.

3 (Bench conference concluded.)

4 THE COURT: All right. Let's take a 15-minute
5 recess.

6 (At 11:06 a.m., break taken.)

7 (At 11:23 a.m., break concluded.)

8 THE COURT: All right. Senator Blue, you may return
9 to the witness stand. You may continue.

10 MR. STRACH: Thank you, Your Honor.

11 BY MR. STRACH:

12 Q Senator Blue, I want to turn your attention for a moment
13 to the development of the 2011 enacted Congressional Plans at
14 issue in this case.

15 A Okay.

16 Q Did you at any point in the Legislative process in 2011
17 submit any alternative redistricting -- Congressional
18 Redistricting Plans yourself?

19 A Not me individually, no. We had several plans that I
20 looked at. There was a plan submitted, I think, by the -- I
21 was not the Democratic leader at the time, but there was a plan
22 submitted by the Democratic caucus in the Senate, and as you
23 alluded to earlier, there was a plan that may have been
24 submitted by the Black Caucus and the General Assembly, but --
25 and I looked at them. I didn't submit any individual plans

1 myself.

2 Q Do you know when those plans were submitted by the
3 Legislative Black Caucus and others on the Democratic side in
4 the 2011 redistricting process?

5 A I think they were some time after Senator Rucho and
6 Representative Lewis submitted their plans, I think. I'm not
7 absolutely sure since I didn't personally deliver them.

8 Q All right. Isn't it true that those were submitted to the
9 legislature on the first day of the redistricting session in
10 2011?

11 A I wouldn't disagree with that, I just don't know.

12 Q All right. And did you, with regard to -- well, there
13 were two different alternative plans -- there were actually
14 three. There were the plans submitted by the Southern
15 Coalition for Social Justice which were submitted earlier in
16 the process. Did you have any input on those plans?

17 A No input on them. I criticized them because I thought
18 that they unnecessarily, in some instances, were trying to
19 create majority minority districts where they weren't justified
20 and the percentages that some of them looked at.

21 Q Okay. So you criticized the SCSJ plan?

22 A Sure did, sure.

23 Q And who did you submit that criticism to?

24 A To the ones who were basically espousing them. I informed
25 their counsel that -- North Carolina is not Alabama or

1 Mississippi, quite frankly, and it did not have the same kind
2 of polarized voting history that those states had. Unlike
3 those other southern states, North Carolina had only 40
4 counties covered by Section 5 of the Voting Rights Act because
5 you hadn't had the practice as prevalent in North Carolina as
6 you had in those other southern states. And so I suggested
7 that some of the remedies were a one size fits all, that you
8 don't create these districts just because you can based on
9 race, that it goes in the opposite direction of where I think
10 our state and our country ought to be going.

11 There may have been some other plan, but I remember
12 specifically when I first heard of the plans proposed by the
13 southern coalition group.

14 Q And when you say you criticized the plans to their
15 counsel, I think, who was that?

16 A I'm trying to think who had it then. I know Anita Earls
17 represents the group. I'm not sure that it was Anita, but
18 there are various people who've been involved. Irv Joyner and
19 some of the other people who had looked at it.

20 Q All right. Did you ever publicly criticize the SCSJ
21 Congressional proposal?

22 A Did I have press conferences beating them up? No. There
23 was no need -- no need to publicly do it because I expressed my
24 opinions to the redistricting chairs. I did in my debate on
25 the Senate floor. I did in discussions. There was some Senate

1 committee, although I wasn't a member of the redistricting
2 committee where Senator Rucho gave me an opportunity to say
3 something, and I was critical of any effort to unduly pack
4 black voters into as few a districts as possible.

5 Q On the Senate floor in the debate on the 2011 plans, did
6 you ever criticize the SCSJ proposal?

7 A I criticized the proposal that was before us, which was
8 Rucho 1 or -- Rucho 2, I think, was the final plan we were
9 acting on, and I openly criticized it and made probably a
10 30-minute speech. It and any plan that unduly packed black
11 voters, whether it was a Congressional Plan or a House Plan or
12 a Senate Plan without justification for it, and I thought that
13 the simple justification were those set forth initially in the
14 *Gingles* decision, where you could show sufficient polarization,
15 and I figured you couldn't do that in the districts that were
16 created in either of those plans, or that it had not been done
17 for this election cycle.

18 It had been done 20 years ago and maybe adopted 10
19 years ago, but there was not any kind of polarization study
20 done, that I'm aware of, on the districts that were created,
21 either Congressional or Legislative in 2011. And I can't help
22 but think that a lot of the counties had elected black
23 sheriffs. They had elected black officeholders in many
24 positions since 1990.

25 And so my first argument, and I suggested to Senator

1 Rucho in my debate on the Senate floor was that in my mind the
2 Fourteenth Amendment required that you have a compelling state
3 interest to do it, and then if you could find that, it had --
4 that solution had to be narrowly tailored to address the issue
5 that you were trying to address, not just packing districts
6 with 50 percent plus when they had performed the way they were
7 designed to perform with less than 40 in many instances, but
8 certainly less than 50 percent majority minority population in
9 90 plus percent of the cases.

10 And so as I criticized that with Senator Rucho, I
11 hope that criticism, or at least observation, would have
12 registered with the sponsors of the other plans because they
13 backed off of their plans.

14 Q Okay. So when the -- when the -- well, let me ask you
15 this: Did you ever reduce your criticisms of the SCSJ plan to
16 writing and submit that to anyone?

17 A No.

18 Q Other than your debates on the Senate floor, did you ever
19 reduce your criticisms of the proposed enacted plans and submit
20 that to anyone? Did you ever reduce those to writing?

21 A I have. I did a lecture at the Wake Forest law school
22 making observations about all of the maps, and I've spoken to
23 law school groups at various times about the maps and what I
24 thought some of the flaws were. I have -- not just law school
25 groups, but civic groups, classes, so I have criticized them on

1 many instances; and, again, my criticism is not at the
2 individuals specifically who did it, but I just think that
3 they're out of the spirit of the Voting Rights Act, and they
4 tend to segregate more than to lead us to an integrated
5 continuous society.

6 Q Right. And all I'm asking, Senator Blue, is there's
7 voluminous records in this case. I'm not aware of a memo or
8 any writing from you to Representative Lewis or Senator Rucho
9 criticizing either the SCSJ plans or the proposed enacted
10 plans. Am I missing something or is there no such --

11 A No, sir. I never directed any writings to Senator Rucho
12 or Representative Lewis. My comments to them were in the
13 context of the Legislative setting, and I did a rather lengthy
14 floor debate on the Senate plan; and, again, as I said, I
15 commented at the committee, and I commented to the press when
16 they would ask me on various of these plans. But, no, I never
17 did any formal submission to Senator Rucho or Representative
18 Lewis regarding them, other than the normal way we communicate
19 about Legislative issues.

20 Q All right. And you talked about black candidates winning
21 an election. Is it fair to say that most, if not all, of your
22 experience with black candidates winning elections is in Wake
23 County where you've been most of your career, is that correct?

24 A No, that's not correct.

25 Q Do you have specific information or knowledge about

1 similar type information regarding candidates in the northeast
2 part of the state?

3 A Yeah, there are instances. As I said, there are black
4 sheriffs in counties up there that are not majority-black.
5 There are commission chairs. There are school boards. I mean,
6 the history in the state in the 40 covered counties, at least
7 those that were covered initially by the '65 Voting Rights Act,
8 was that polarized voting was commonplace, and I know that in
9 the 1980s formulation that led to *Gingles*, there was testimony
10 that no black candidate had ever gotten more than 10 percent of
11 the white vote east of Interstate-95, you know, one county over
12 from Wake County, but in the other 60 counties, that was not
13 necessarily so.

14 And one would think over the 30-year period, as we've
15 basically had more desegregation of public schools, mind you
16 that didn't start in earnest until the 1970s, and this data was
17 predicated on stuff that happened before 1980, but over the
18 30-year period, one would certainly hope that if you did a
19 current day polarization study, you would find that there would
20 be much greater cross-racial voting in those areas.

21 And what I'm suggesting is that study was not done.
22 If that study showed that you still had polarized voting,
23 African-American still could not elect the candidates of their
24 choice, be them black or white, and that you had a geographical
25 area that was sufficiently compact enough that you would then

1 need to do something to remedy that. But the remedy shouldn't
2 be put in place to last in perpetuity, because when you put it
3 in place to last in perpetuity, you're simply preserving the
4 status quo forever, and that's what we want to move away from
5 and that's what I think the Voting Rights Act was designed to
6 do.

7 Q Senator Blue, were you aware of the polarization study
8 conducted by SCSJ expert Dr. Block?

9 A No, I was not -- I didn't see that. SCSJ?

10 Q SCSJ. Were you aware of the study by their expert of
11 racially polarized --

12 A I never saw that. It was not -- it was not part of our
13 deliberation in the Senate debate.

14 Q All right. If the transcripts in the record say
15 otherwise, you'd obviously be willing to rely on the written
16 record?

17 A Oh, ab -- yeah, I don't know. I mean, I never heard
18 anybody mention those polarized studies in our debate. It
19 certainly was not mentioned in the Senate debate. What was
20 mentioned was that somebody had studied polarized voting in the
21 '90s and 2000 and that same thing was still occurring, but
22 there was no current study of polarized voting on a
23 district-by-district basis as far as I know. And it was my
24 feeling, and I think a requirement, that you look at it on a
25 district-by-district basis, especially in a state like North

1 Carolina where you had 40 counties that had a different history
2 than the other 60 counties.

3 Q Right. And when the state was covered under the Voting
4 Rights Act, it was counties that were covered, right, not
5 districts? Weren't there 40 counties, not 40 districts that
6 were covered?

7 A Forty counties, yes.

8 Q Right. And were you also aware of a racial polarization
9 study done by Dr. Brunell who expanded upon Dr. Block's work?
10 Were you aware of that?

11 A In 2011?

12 Q In 2011, yes, sir.

13 A 2011?

14 Q 2011.

15 A No, nobody referred to that specifically. I didn't see
16 that as part of the presentation before the committees.

17 Q All right. So your testimony today is based on your
18 belief that there was racially polarized voting analysis that
19 was lacking before the legislature in 2011?

20 A My testimony today is I was not aware of any
21 district-by-district polarization study that was done based on
22 the 2010 census and the other factors that would have been used
23 for 2011 redistricting. If it was, in fact, looked at, it was
24 not made part of the debate or the arguments in the Senate and
25 when the plan was presented to us, neither the Congressional

1 Plan nor the Senate Redistricting Plan.

2 Q All right. And just to be clear, though, your testimony
3 today is you are not aware of, and you never read, the reports
4 by Dr. Block or Dr. Brunell?

5 A I know that there was a report that said that the
6 polarization studies from 20 -- from 1990 or '91 and 2001 show
7 that there was polarized voting in North Carolina and that that
8 polarized voting continued. I never saw any data, was not
9 presented with any report or any other indication that there
10 was a polarization study done on a district by district basis
11 either in the Congressional Districts or the Legislative
12 Districts that were made majority minority black in 2011.

13 Q All right. Now, Senator Blue, turning -- shifting back to
14 Congressional District 1, and this is related to this
15 polarization issue we've been discussing. Isn't it true that
16 at least as late as 1997 the conditions existed in that
17 district for what we call a VRA district or a majority-black
18 district?

19 A In the Congressional District?

20 Q Yes, sir.

21 A Yeah, because there was a district that was created and
22 nobody -- nobody challenged it in a serious way.

23 Q And in the exhibit that we looked at earlier, Exhibit 73,
24 which was the preclearance submission for the '97 plan, do you
25 recall that the state stated in that that the *Gingles* factors

1 were still in effect in CD 1 at that time?

2 A In 1997, yes, because there had been a study done in that
3 time frame within the last three or four years, I think.

4 Q All right. Now, you said that in 2001 you were on the
5 redistricting committee that created the redistricting plans
6 that year, is that right?

7 A As I recall, yes.

8 Q All right.

9 A And, again, understand, Mr. Strach, that in '80, '90, and
10 2000, all members got access to the redistricting process, the
11 debates in the redistricting committees, and members were
12 consulted individually about their proposed districts, be they
13 Republican or Democrat. That was the process on those
14 districts prior to 2011.

15 So, as I said, I participated in discussions about
16 Congressional Districts as well as House districts in the 2000
17 redistricting cycle. I was not involved in 2003 because I had
18 left the General Assembly, and ultimately the 2003
19 redistricting is what determined the districts that we all ran
20 under from 2003 to 2010.

21 Q And isn't it true, Senator Blue, that even as late as
22 2001, when CD 1 was created, that the conditions satisfying the
23 *Gingles* factors existed then, too?

24 A I think they probably did in the counties where the
25 studies had been done, but the difference is that there were

1 multiple counties dragged into the Congressional District 1 in
2 2011 that were not Section 5 counties, and specifically I
3 mentioned Durham County again.

4 Durham County had never been a Section 5 county. In
5 the *Gingles* decision the Court specifically found that there
6 was not polarized voting in Durham County that -- or
7 specifically held that there was not polarized voting in Durham
8 County, that Durham County residents, African-American and
9 others, could elect the candidates of their choice, and so
10 there was no requirement to even draw a minority district in
11 Durham, even though it was easily drawable because you had a
12 compact enough population to do it in.

13 The case law didn't require it. The General Assembly
14 just decided to draw one so that it wouldn't be sort of
15 standing out like the others.

16 Q Now, you agree, though, that other than Durham County,
17 there are a lot of other counties in 2011 CD 1 that are in fact
18 Section 5 counties, is that correct?

19 A Absolutely, I agree totally with you. And, again, most of
20 the counties in that district are east of Interstate 95.

21 Q And Senator Blue, with regard to the finding in *Gingles*
22 that there was no polarized voting in Durham, that was in the
23 context of a multimember district, is that correct?

24 A Um-hum.

25 Q Okay. Not a single member district?

1 A But if there's no polarized voting in a multimember
2 district, there's none in a single member district. The
3 finding is no polarized voting.

4 Q Right.

5 A That the whites vote for African-Americans and a
6 percentage high enough so that you can't prove that it's
7 polarized voting against African-Americans.

8 Q Senator Blue, this relates to the point we made earlier
9 about single-shot voting, correct. Wasn't it possible to
10 single-shot vote in Durham *in the Gingles* era?

11 A No, because that was a state-wide phenomena. That
12 happened in Mecklenburg. That happened in Cumberland, which
13 was a covered county, Cumberland was.

14 Q Right. I understand. The only point I'm trying to get
15 you to agree with is that district was a multimember district
16 in Durham and folks could single-shot if they wanted to?

17 A But the point is in *Gingles* the Court said that you don't
18 have to draw a single member district in this multimember
19 setting. Regardless of what they're doing, you cannot show
20 that there's white polarized voting against black candidates.
21 That was the specific holding in *Gingles*.

22 Q All right. Well, *Gingles* speaks for itself.

23 A Yes, sir.

24 Q We'll let the Court decide what *Gingles* means. In
25 Congressional District 1, Senator Blue, under the 2001 plan, do

1 you recall that the black percentage of Democrats in that
2 district was a super majority?

3 A The black percentage of blacks in the Democratic primary
4 was a majority.

5 Q Yes. Wasn't it a super majority, Senator Blue?

6 A Super majority being what?

7 Q Over 60 percent?

8 A I don't know whether that was the fact or not; and, again,
9 what I remember looking at it is that Eva Clayton, who
10 represented the district at the time, had consistently gotten
11 higher percentages of the vote after her initial run in a
12 district that was somewhat different against now Congressman
13 Walter Jones, and her numbers kept going up. And I think maybe
14 by the end of the decade, she was getting close to 70 percent
15 of the vote in the general election and not having any serious
16 primary opposition or any opposition that amounted to very
17 much, and may have been getting 80 plus percent when she was
18 challenged in the primary.

19 I mean, it was clearly a district that Clayton was
20 going to consistently be elected in and history showed that
21 everybody else, even though the numbers went down, were elected
22 in it. Frank Ballance was elected in it, first term by a
23 comfortable margin. G.K. Butterfield was -- has consistently
24 been elected in it, prior to 2010 when it had far less than
25 50 percent of black voting-age population.

1 Q Right. My question though is do you have any reason to
2 dispute me when I say that the black percentage in the
3 Democratic Party, in terms of controlling the Democratic Party,
4 is over 60 percent?

5 A I just don't know. I just don't know. I don't know that
6 that was one of the factors that really was focused on that
7 much. What was looked at is that there was a feeling that
8 that -- that the *Gingles* factors were still prevalent in the
9 1st Congressional District as it was comprised, and I think all
10 but one or two counties in the district, and it may be all of
11 them, were Section 5 counties. But Durham County, the most
12 pronounced of the counties in it now, had never been a Section
13 5 county, had never violated any of the *Gingles* principles, and
14 to build a district around Durham County saying that you are
15 forced to take the percentages above 50 percent just didn't
16 quite register. That's the only point I was trying to make.

17 MR. STRACH: Your Honor, may I approach the witness
18 with an exhibit?

19 THE COURT: You may.

20 BY MR. SPEAS:

21 Q Senator Blue, what I've handed you has been marked
22 Defendant's Exhibit 2.64.

23 A Um-hum.

24 Q It's a chart regarding the 2001 Congressional Plan, and
25 there's some data on this chart, and I simply want to draw your

1 attention to about the middle of the chart. You'll see the top
2 part of the chart regards District 1. Do you see that?

3 A Yes.

4 Q And if you move over to the right on this chart, at the
5 top part of it, there's a column called "black portion of
6 DEMS," do you see that column?

7 A I see that.

8 Q And so for Congressional District 1, the black portion of
9 DEMS in that particular district under the 2001 plan was
10 66.55 percent. Do you see that?

11 A Yep, I see that.

12 Q All right. Do you have any reason to believe that that's
13 incorrect?

14 A I have no reason to believe that that's correct for 2010.
15 It doesn't say what it is for 2008 and 2006, but, no, I don't
16 dispute that.

17 Q And at the bottom of that column, there's a number that
18 says that state-wide, without regard to districts,
19 41.38 percent of DEM, Democrats, are black, do you see that,
20 the last number in that column below?

21 A I see that, yes.

22 Q So the proportion of Democrats who were black in
23 Congressional District 1 was significantly greater than their
24 state-wide proportion. Would you agree with me on that?

25 A I agree with you on that, and that's in 2010 before

1 redistricting.

2 Q This was on -- this was in -- for 2000 -- right, that's
3 right, this is for the 2001 plan --

4 A Um-hum.

5 Q -- correct?

6 A Um-hum.

7 Q Now, you were involved in the creation of the 2001
8 Congressional Plan, correct?

9 A Um-hum.

10 Q As part of the Redistricting Committee?

11 A Yes.

12 Q Why would it be necessary to ensure that black voters were
13 a super majority of the Democrat Party in that district in
14 2001?

15 A A good portion of the district consisted of whole
16 counties, and so you would tend to, I guess, dilute the
17 white -- the overall population. I don't know what this number
18 would look like in the 2012 election, the 2011 redistricting
19 plan, but you're talking about the percentage of voters, not
20 the percent of black voting-age population of black registered
21 voter I take it. You're talking about those who were inspired
22 enough to go vote in 2010, and so I don't know what -- I'm
23 trying to figure out what the numbers mean and how they would
24 compare with the current numbers, say, 2012, because in 2012
25 probably it was a much higher percentage of -- the black

1 portion of the Democrats was probably much higher than the
2 number that you see here.

3 Q Right. And I'm just focused on 2001 right now, if that's
4 okay. Didn't you and your colleagues in 2001 ensure that
5 blacks were a super majority of Democrats in that district to
6 ensure that in a race between a black Democrat and a white
7 Democrat that the black voters could control the outcome of
8 that race?

9 A That was part of the -- not necessarily that the black
10 voter -- the black candidate would control it, that the black
11 citizens in that district would be able to elect the candidate
12 of their choice. Now, what the numbers looked like in 2010,
13 Mr. Strach, would be totally different than what they looked
14 like in 2001.

15 And the reason that they would be different, you've
16 already pointed out. That district lost more than 15 percent
17 of its population base. It lost -- it was not -- not lost it
18 but did not increase its population base. It was almost
19 100,000 people short at the redistricting effort, so it changed
20 from 2001 to 2010, and you're giving me numbers to comment on
21 that are based on turnout as opposed to who's registered or
22 who's black voting-age population. I'm simply trying to
23 understand it. I'm not trying to evade your question, but I'm
24 simply trying to understand what you want me to observe on
25 this.

1 MR. STRACH: That's fine, Senator Blue. I actually
2 think you've answered the question. Your Honor, I don't have
3 any further questions.

4 THE COURT: Redirect?

5 MR. SPEAS: No, Your Honor, thank you.

6 Your Honor, we would call Congressman Mel Watt to the
7 stand.

8 (Witness sworn by the clerk.)

9 MELVIN WATT,

10 PLAINTIFF'S WITNESS SWORN AT 11:52 a.m.

11 DIRECT EXAMINATION

12 BY MR. SPEAS:

13 Q Would you state your name for the record, please.

14 A Melvin Watt.

15 Q And would you tell the Court a little bit about where you
16 grew up and where you went to school?

17 A I was born in Mecklenburg County outside of Charlotte.
18 Went to high school, segregated high schools -- schools all the
19 way -- public schools in Mecklenburg County.

20 Graduated from high school in 1963, and then went on
21 to the University of North Carolina, got a BS degree in
22 business administration from the University of North Carolina
23 at Chapel Hill in 1967, and then went to Yale Law School and
24 got an LLM, which was subsequently converted to a JD degree
25 from Yale University Law School in 1970.

1 Q And did you practice law in North Carolina for thereafter?

2 A I did. I went back to North Carolina in 1971 and
3 practiced law from 1971 to 1990 -- I guess early 1993 in
4 Charlotte.

5 Q And what firm were you with?

6 A The firm at that time was Chambers, Stein, Ferguson &
7 Lanning. In subsequent iterations of it, it was known as The
8 Chambers Firm.

9 Q And was it a firm significantly involved in civil rights
10 litigation?

11 A It was, but I went to the firm, actually, to -- because
12 there was a recognition that there was more and more an
13 economic component to civil rights. And so, my role was really
14 to start a business practice, and I did -- that's basically
15 what I did for 20 years, small businesses, real estate, estates
16 work, and some workers' compensation.

17 Q At some point, did you become interested in politics?

18 A Yes. I got a call from Harvey Gant one day after he had
19 been appointed to the Charlotte City Council to replace an
20 individual who had gone on to the State Senate. And he had to
21 run a campaign, and he asked me to be his campaign manager. I
22 think that was 1974. And he was running for the Charlotte City
23 Council in 1975, I believe it was.

24 Q Okay. And as a result of that experience, did you
25 learn -- did you become interested in running for office

1 yourself?

2 A No, not really. I managed his political campaigns for
3 city council in '77 -- '75, '77, and then in 1979, he called
4 and said he was going to run for mayor of Charlotte, and I
5 managed his campaign for mayor of Charlotte. We lost that
6 election by about 95 votes out of 100,000 votes cast in the
7 Democratic primary. So he was out of office.

8 Then, two years later, he ran for the city council
9 again and was overwhelmingly elected, became the mayor pro tem.
10 And then two years after that, he ran for mayor again. I
11 managed that campaign, and he was elected mayor of Charlotte in
12 that election.

13 Q And --

14 A And then, subsequently, he, in 19 -- let me get my years
15 right -- 1989, he called me and said he was going to run for
16 the United States Senate against Jesse Helms, and I managed his
17 first state-wide campaign in 1990. And, of course, he lost
18 that election. And then they created the 12th Congressional
19 District based on the 2000 Census.

20 And I called him and said I was ready to manage his
21 campaign for Congress, and he told me he was not going to run,
22 and suggested that I might consider doing it. And I did.

23 Q And that was in 1992 that you first ran for Congress?

24 A 1992, yes.

25 Q And I believe you were elected for 11 terms?

1 A I was elected for 11 straight terms, right.

2 Q You're not currently in Congress?

3 A That is correct.

4 Q What are you doing at present?

5 A I'm the Director of the Federal Housing Finance Agency as
6 an independent agency that has regulatory supervision over the
7 federal home loan banks and Fannie Mae and Freddie Mac.

8 Q And, Congressman, over the years, were you aware of the
9 percentage of your district that was African-American?

10 A Yes, I was. I tracked it. It was constantly in
11 litigation the first 10 years I was in Congress. I think the
12 district changed at least four or five times, some of which I
13 ran in and some of which got thrown out before the subsequent
14 election. But in the early stages, the Congressional District
15 was majority -- the voting-age population was majority
16 African-American.

17 And then the Court ruled that race was being taken
18 into account too much, and so they drew the district down. And
19 there was district that I ran in in which the African-American
20 population was about 35 or 36 percent, and then that one got
21 changed. And we finally settled on a district that was
22 approximately 40, 41, 42 percent African-American, and that one
23 was approved by the Supreme Court.

24 Q Is it accurate, Congressman, that at every election since
25 1998, the African-American voting-age population in your

1 district was less than 50 percent?

2 A That's correct.

3 Q And at one point, it actually got down to, I think, 32 or
4 so percent?

5 A Somewhere -- I was thinking it was a little bit higher
6 than that, but it probably was down to 32 percent.

7 Q And like most politicians, you probably are familiar with
8 how you did in those elections?

9 A Yes, I tracked that. And when the district was over
10 40 percent, I generally got between 60 and 65 percent of the
11 vote. The one occasion where the minority percentage had been
12 drawn down to 32 or whatever it was percent that we agreed on,
13 I got approximately 55 percent of the vote. That was the
14 election in which they spent about a million dollars against me
15 telling people how terrible I was.

16 Q Congressman Watt, you're a student of politics. Tell the
17 Court what you think accounts for those margins of victory in a
18 district that was, since 1998, less than 50 percent
19 African-American?

20 A Well, I would like to say good representation first. I
21 think that is a factor in trying to serve all of the members of
22 the Congressional District without regard to race or gender or
23 ethnicity. Over the years, and actually going all the way back
24 to when I managed campaigns for Harvey Gant in Charlotte, we
25 had developed a pretty strong process for building coalitions

1 across racial lines, across precinct lines, and racial
2 attitudes were in the process of changing, and they have
3 continued to change over time.

4 Q Now, let's turn our attention to the 2011 redistricting.
5 You were still in Congress at that point?

6 A That's correct.

7 Q Okay. Were you approached by Senator Rucho to meet with
8 him with regard to redistricting?

9 A Yes, I was. He asked me if I would come and meet with him
10 and give him my thoughts about congressional redistricting in
11 general and redistricting. And I told him I'd be happy to do
12 that, and I went and met with him.

13 Q Would you share with the Court what you shared with
14 Senator Rucho on that occasion. That was in April, you said?

15 A April 25th of --

16 Q 2011?

17 A -- 2011. I went to Raleigh with my district director and
18 met with what we were told was going to be Senator Rucho and
19 Representative Lewis, but Representative Lewis never showed up
20 for the meeting. There was a staff person who came with
21 Senator Rucho, so it was the four of us.

22 And by that time, I had looked at the numbers. My
23 Congressional District, the 12th Congressional District, was
24 approximately 2800 people over what the one person, one vote
25 mandate would have required. And so I suggested to Senator

1 Rucho that we -- that because the district had gone through so
2 much litigation historically, and because the Supreme Court had
3 finally approved the district, that the wise thing to do would
4 be to do what I called a minimal change district for the 12th
5 Congressional District.

6 And I suggested to him he wait to do that by dropping
7 a couple of precincts that, for various reasons, I had felt
8 like I had not served as well as I had the rest of the
9 district, and by adding some smaller precincts to get to the
10 magic number of people in the Congressional District.

11 Q Anything else occur at that meeting that you recall? You
12 simply provided him your views about your district?

13 A No. He seemed receptive to the idea, and there were no
14 maps exchanged at that time. I identified, I think, the
15 precincts that I suggested might be taken out. I'm not even
16 sure I identified necessarily the precincts that would be put
17 in, the smaller precincts. But the meeting was cordial and I
18 thought -- I thought constructive.

19 Q Had you known Senator Rucho before?

20 A I had. Senator Rucho was my orthodontist before I went to
21 Congress. I still have some of his work in my mouth. And I
22 considered him a friend. And so, in a sense, I mean, it was --
23 I thought he was asking me to give him advice because he was
24 telling me that he was going to be the -- or had been appointed
25 by that time as the Chair of the Redistricting Committee, and

1 was seeking my advice as a friend.

2 Q Would those changes to those two or three precincts have
3 significantly affected the African-American population in that
4 district?

5 A No, I don't think so. I don't think so. Basically, what
6 I suggested to him was my Congressional District, throughout
7 its history, had oriented generally up Interstate 85. And
8 initially, a part of it went up Interstate 77. And at some
9 point, if you went up Interstate 77, you'd get the towns of
10 Huntersville, Cornelius, Davidson where Davidson College is,
11 and my district actually went all the way into Iredell County,
12 one of the iterations of it, until it got shot down.

13 Well, in 2000 -- based on the 2000 Census, when the
14 districts were drawn, the folks in Davidson around Davidson
15 College wanted to stay in my Congressional District, and the
16 rest of the district was going to be oriented up Interstate 85.
17 So they kept Davidson in my Congressional District by going
18 across the Cabarrus County line to pick it up. And it was just
19 inconvenient to get up there to serve the people in Davidson --
20 in Davidson, North Carolina, not Davidson County.

21 Q Okay. So when you left that meeting, you had no sense
22 that the population in -- the African-American population in
23 the district would be significantly increased?

24 A No. In fact, I was suggesting to him that a minimal
25 change district would comply with the law. And I didn't see

1 any need to increase African-American percentage in my
2 Congressional District because I was getting 65 percent of the
3 vote.

4 Q Did you subsequently learn that Senator Rucho planned, in
5 fact, to increase the African-American population in the
6 district significantly?

7 A I learned that later. He called me one weekend when I was
8 in Charlotte and asked me if I would meet with him again, and I
9 said, yes, but I don't want to drive all the way to Raleigh to
10 do it. Both of us live here in Mecklenburg County; why don't
11 we do it here in Charlotte? And he invited me to his home.

12 And I went to his home on a Monday morning, and we
13 had a meeting at his home. It was kind of an interesting
14 meeting because when he called me on the phone, I was expecting
15 him to show me maps and tell me specifically how they planned
16 to draw the district because it was later in the process by
17 that -- by the time of that meeting.

18 Q Was this in June?

19 A I think it was in June. And I got to the meeting, and it
20 really was kind of an uneventful meeting in the sense that
21 there were no maps. And at some point, I mean, I could sense
22 that Senator Rucho was not very comfortable. And at some
23 point, he said to me that his leadership had told him that he
24 had to ramp the minority percentage in my Congressional
25 District up to over 50 percent to comply with the Voting Rights

1 Law. And I said -- I laughed. And I think his discomfort was
2 because his leadership had told him that he was going to have
3 to go out and justify that to the African-American community.

4 So I chuckled and said, Bob, you won't be able to
5 justify this to the African-American community. It is not --
6 the Voting Rights Act does not require it. It does not mandate
7 it. And the African-American community will laugh at you
8 because I'm getting 65 percent of the vote in a 40 percent
9 black district. If you ramp my Congressional District
10 African-American percentage up to over 50 percent, I'll
11 probably get 80 percent of the vote, and -- and that's not what
12 the Voting Rights Act was designed to do.

13 Q Just a matter of curiosity, what percentage vote did you
14 get in 19 -- I'm sorry, in 2012 in the newly redrawn 12th
15 District?

16 A In the newly redrawn district, I got about 80 percent of
17 the vote, just like I had predicted to him I would.

18 Q Did you express your concerns about this decision to the
19 North Carolina legislature?

20 A I did.

21 Q And did you ask Senator Graham to read a letter into the
22 record of the debates of the North Carolina General Assembly
23 about this matter?

24 A I did. I addressed a letter to Senator Rucho and
25 Representative Lewis as chairs of the committee, and I copied

1 that letter to a number of other people. And Senator Graham --
2 State Senator Graham was a friend of mine, and I asked him if
3 he would read it into the record first at the hearing that they
4 were having, not on the legislative floor. And then,
5 subsequently, I did a second letter that I asked him to read on
6 the floor of the Senate, I guess it was.

7 Q Okay. Congressman, would you turn to your tab in the
8 notebook in front of you.

9 A I don't think I have a notebook in front of me. I'm
10 sorry.

11 MR. SPEAS: If I may approach the witness, Your
12 Honor.

13 THE COURT: You may.

14 BY MR. SPEAS:

15 Q Turning to Congressman Watt tab, and I'd like for you,
16 Congressman, to turn to tab 30 in that notebook. And I would
17 ask you if that is the transcript of the proceedings of North
18 Carolina Senate on July 25, 2011, at which Senator Graham read
19 your remarks into the record?

20 A It appears to be, yes, it does.

21 Q And your remarks begin on page 38 of -- I'm sorry, they
22 begin on page 37 of Exhibit 30. Do you see where your remarks
23 begin?

24 A I do, yes.

25 Q Okay. And I would like for you, Congressman, if you

1 would, to turn with me over to page 38 of your remarks, and we
2 have this up on the screen. I'd like for you to read for the
3 Court the comments in your letter beginning at line 6 on
4 page 38 and continuing to line 23.

5 A It says, Plan 1, propose to increase the African-American
6 population in the 12th District from approximately 40 percent
7 to over 50 percent. I have repeatedly expressed to Senator
8 Rucho my belief that increasing the African-American population
9 in the 12th District is not required, justified, or sanctioned
10 by the Voting Rights Act.

11 The Voting Rights Act, which I was instrumental as a
12 member of the House Judiciary Committee and as Chairman of the
13 Congressional Black Caucus to get Congress to reauthorize and
14 extend, was designed to counteract the ethnic and racially
15 repolarized voting and level the playing field for
16 African-American candidates and voters. It was not, as several
17 Court decisions have indicated, designed to create racial
18 ghettos in which African-American candidates are given
19 inordinate and unreasonable election advantages.

20 Q Do you stand by those words today?

21 A I absolutely do.

22 MR. SPEAS: Thank you. No more questions.

23 THE COURT: Cross-examination? And just for the
24 record, I don't know, ultimately, in terms of the official
25 record whether these books will be a part of it, so I do think

1 when you have him turn to a tab, you probably ought to note the
2 actual exhibit number. You understand what I'm --

3 MR. SPEAS: And it's exhibit -- it's Plaintiff's
4 Exhibit 30.

5 THE COURT: This one will be -- looks like
6 Defendant's 30.

7 MR. SPEAS: There is a version in our record of --

8 THE COURT: Okay.

9 MR. SPEAS: -- Plaintiff's 30. There is also in
10 their record at 30.

11 MR. FARR: May I make a suggestion to my learned
12 colleague?

13 THE COURT: Make it to me and we'll see what he
14 thinks of it.

15 MR. FARR: All right. Perhaps the Court might think
16 this is a good idea. I don't know why we couldn't just put an
17 exhibit sticker on this notebook, like a class exhibit sticker.

18 THE COURT: Whatever. In terms of an official
19 record, I just want to make sure that ultimately at the end of
20 the day, it's not confusing. So, for now, it's Plaintiff's 30?

21 MR. SPEAS: Plaintiff's 30.

22 MR. FARR: Defendant's 30?

23 THE COURT: Defendant's 30.

24 MR. SPEAS: Defendant's 30.

25 THE COURT: All right.

1 MR. SPEAS: Thank you.

2 THE COURT: Defendant's 30.

3 MR. SPEAS: It has a plaintiff's number. Okay.

4 Thank you.

5 THE COURT: All right. Cross-examination?

6 MR. FARR: Yes, Your Honor. I have a couple things

7 I'd like to do. I would like to approach Congressman Watt.

8 Congressman Watt, may I address you as Congressman

9 Watt?

10 THE WITNESS: I've been called worse. Yes.

11 MR. FARR: Thank you, sir. I'd like to approach

12 Congressman Watt and give him a copy of exhibit -- Defendant's

13 Exhibit 126, which is the map notebook which I handed up to the

14 Court previously.

15 THE COURT: All right.

16 MR. FARR: And I'd also like to have an easel up

17 there so I could put some blowups of the map up so the Court

18 and Congressman Watt could see some blowups of a couple of

19 these maps, if that would be all right.

20 THE COURT: This is Defendant's Exhibit 126?

21 MR. FARR: Yes, sir.

22 THE COURT: All right. Any objection to Defendant's

23 126?

24 MR. SPEAS: No, Your Honor.

25 THE COURT: All right.

1 (Discussion regarding placement of exhibits.)

2 MR. SPEAS: Your Honor, may I stand here?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MR. FARR:

6 Q Okay. Congressman Watt, I want to go through the
7 historical maps of the 12th District, and that's what
8 Exhibit 126 is, so could you just turn in Exhibit 126 to Tab 1?
9 Do you see Tab 1?

10 A Yes.

11 Q Now, does Tab 1 include a map of the original version of
12 the 1st Congressional District as it was enacted in 1991? You
13 can stay at the exhibit because there's a session log attached
14 at the beginning of it.

15 A If you're asking me if I know whether this is the map, the
16 answer is no. I mean, I take your word for it that it is, but
17 I -- I mean, it's been a lot of water under the bridge since
18 this map was drawn. And I was -- you should also know that I
19 was not really involved in the drawing of any of these maps. I
20 was the -- my district was the subject of some of them, and I
21 represented the district throughout, but I was not -- in the
22 state legislature, I was not actively participating in the
23 drawing of maps.

24 Q Okay. But the -- is my memory correct, Congressman Watt,
25 that you were the first person to run in Congressional District

1 12?

2 A Yes.

3 Q Okay. And do you recall that in '91, the General Assembly
4 passed a map that only had one majority-black district, and the
5 Justice Department objected to that under Section 5?

6 A I remember that, yes.

7 Q Okay. And there have been a bunch of cases about
8 Congressional District 12, and are you familiar with those
9 cases?

10 A Generally, yes.

11 Q Like the *Shaw* case. You're familiar with that?

12 A Generally, yes.

13 Q You're familiar with *Cromartie* case?

14 A Generally, yes.

15 Q Okay. Now, do you recall that when the Justice Department
16 objected to the first Congressional Plan, that they suggested
17 that the State create a majority-minority coalition district
18 running from Mecklenburg County to Wilmington?

19 A I don't have any personal knowledge of that other than
20 what I read in the newspaper. I mean, I was not involved in
21 that process, to be quite honest.

22 Q Well, do you recall that that was what the objection from
23 the Justice Department said?

24 A I recall that's what I read in the newspaper, yes.

25 Q And did the General Assembly enact a second majority-black

1 district running from Charlotte to Wilmington?

2 A I don't recall whether they did or not.

3 Q Okay. Well, let's turn to Tab 2. And can you recognize
4 that as the 1992 Congressional Plan that first created the 12th
5 District?

6 A This is the one that appears to run from Gastonia and
7 Charlotte on the south to Durham on the north. Is that the one
8 you're referencing?

9 Q Right.

10 A Yes.

11 Q And this was the district that was the subject of the *Shaw*
12 litigation; is it not?

13 A I think that's correct.

14 Q And in the *Shaw* litigation, there was no ruling on the
15 legality of the 1st Congressional District as it appears in
16 this map; is that correct?

17 A I have no idea, to be quite honest with you.

18 Q Okay. And in the *Shaw* case, the second time it went to
19 the Supreme Court, the Supreme Court ruled this version of
20 District 12 to be an illegal racial gerrymander; is that
21 correct?

22 A I think that's correct, yes.

23 Q All right. And then, if you turn to Tab 3, do you
24 recognize this, that this was the plan that the General
25 Assembly enacted after the *Shaw* case?

1 A I know that this is a plan that was adopted. I don't know
2 whether this is the plan that was adopted after the *Shaw* case.
3 I mean, my problem is I was not involved in the litigation. I
4 mean, I was running in these districts after the cases were
5 decided, after the districts were drawn, but I was not actively
6 involved in the drawing of any of the districts.

7 Q All right. But do you recall running in a district that
8 looked like this in --

9 A Yes --

10 Q -- the 2000 general election?

11 A Yes, I do recall that.

12 Q Okay. And is it fair to say that in this district,
13 you're -- the 12th District in this case does not go into Union
14 County? Is that fair to say?

15 A Does it go into Union County? No, it has never gone into
16 Union County that I'm aware of.

17 Q Okay. And it didn't go into Cabarrus County, either; did
18 it?

19 A No.

20 Q And the 8th Congressional District in this plan did not go
21 into Mecklenburg County; is that correct? This '97
22 House/Senate Plan A, the 8th District does not go into
23 Mecklenburg County?

24 A The 8th District is the -- is what's in blue. It appears
25 to go into Mecklenburg County, but I may be misreading.

1 Q I think that's the 9th District. I think the color is
2 blending.

3 A Oh, okay. I see what you're saying. So what color is the
4 8th District? I'm not sure.

5 Q It's the light blue.

6 A It's what?

7 Q The light blue. It's in Union County, in Catawba, and
8 Stanly, and Hanson, and so forth.

9 A Okay.

10 Q So that -- the 12th District didn't go into Cabarrus
11 County under this plan?

12 A I'm sorry? Would you --

13 Q The 12th District was not pushed into Cabarrus County --

14 A That's correct, yes, not in this plan, right.

15 Q -- in this plan? And the 8th District was not pushed into
16 Mecklenburg County?

17 A Based on what you say, yes --

18 Q Okay.

19 A -- that appears to be correct.

20 Q Now, turning to Tab 4, did you ever run in the 12th
21 District as a representative by this plan?

22 A I don't know the answer to that. I ran in a 12th District
23 that appeared similar to this, but I don't know whether it was
24 this plan or not, to be quite honest.

25 Q All right. Did you -- the district that you talked about

1 where you won with 55 percent of the vote.

2 A Is that this district?

3 Q That's what I'm going to ask you.

4 A Okay.

5 Q I think it is. I think it is. I want to know --

6 A I don't know, because I can't look at a map like this and
7 really tell what's included. I mean, there's not enough
8 detail. This is just a picture. So I'll take your word that
9 this is the -- this is the district that drew the minority
10 percentage down to -- but, I mean, you're asking me to testify
11 about it, and I don't know the answer to that.

12 Q Okay. You ran one time in a district that had a minority
13 population in the 30 percent range?

14 A That's correct.

15 Q Was that in 1998?

16 A That's correct.

17 Q And then, that district went away and you never had an
18 election in that again?

19 A That's correct.

20 Q In 2000, is it not true that you -- your district that you
21 ran in was the one that is represented under Tab 3, the '97
22 House/Senate Plan A.

23 A I'm not trying to avoid your question. I just can't look
24 at these maps and tell you for certain that what you're saying
25 is correct. I mean, I don't have any reason to dispute what

1 you're saying, but I suppose you're not testifying. So, you're
2 trying to get me to confirm it, and I don't have the ability to
3 do that based on looking solely at these -- at the map.

4 Q Okay. Well, do you recall the counties that your district
5 was in?

6 A Yes.

7 Q And so, in the 2000 election, what counties was your
8 district in?

9 A Part of Mecklenburg. Is that Tab 3?

10 Q I'm looking at the 2000 election, which we're looking at
11 Tab 3.

12 A Okay. According to this map, it would be Mecklenburg --
13 part of Mecklenburg, part of Iredell, part of Rowan, part of
14 Davidson, and part of Forsyth, and part of Guilford.

15 Q Okay. And then, if you turn to Tab 5, do you recall
16 whether or not Guilford County was in the district that you ran
17 in in '98?

18 MR. SPEAS: Your Honor, I object to this line of
19 questioning. Mr. Farr has lots of witnesses over there who can
20 testify from their own knowledge about what map is what. This
21 witness simply does not have that information.

22 And I think what we've got here is Mr. Farr is
23 testifying, not the witness, so I object to this.

24 THE COURT: I can sort through what's comments by
25 counsel and what Senator Watt is testifying to. But in terms

1 of the substantive objection, response? Any response?

2 MR. FARR: Well, your Honor, he testified at length
3 about all the elections that he ran in from '92 to 2010 in this
4 district, so I think it's fair game for me to ask him about the
5 districts he ran in.

6 THE COURT: All right. I'm going to overrule the
7 objection and allow the question to continue. Now, I
8 understand your issue in terms of if he doesn't identify the --
9 or doesn't know what the map is, a lot of colloquy from counsel
10 about what it is may not advance things. But in terms of
11 asking him about the districts in which he ran, I think this is
12 fair, and I'll overrule.

13 Do you remember what the question was?

14 THE WITNESS: No, sir.

15 THE COURT: I didn't.

16 MR. FARR: I don't, either, Your Honor, so I'll start
17 with another one.

18 THE COURT: Let's start back over. I think you were
19 moving --

20 BY MR. FARR:

21 Q Actually, what I want to do now is I want to turn to the
22 Congressional Zero Deviation Plan which is under Tab 5, and may
23 I go to my exhibit now, Your Honor?

24 So Congressman Watt, Tab 5 is the plan that was
25 enacted in 2001 that you -- the 12th District that you ran in

1 was in the Congress Zero Deviation Plan?

2 THE COURT: You're welcome to stand there, Mr. Farr,
3 but when you move away from the microphone, you need to raise
4 your voice.

5 MR. FARR: Okay.

6 THE COURT: If you could ask that question again.

7 THE WITNESS: I have to take your word for it. I
8 can't -- I mean, I can't look at this map and tell you that it
9 is or is not the map that was passed. I mean, but if you say
10 it is, I don't have any reason to dispute that.

11 BY MR. FARR:

12 Q Okay. Do you recall what county your 2001 district was
13 located in?

14 A Part of Mecklenburg, part of Cabarrus, part of Rowan, part
15 of Davidson, part of Forsyth, and part of Guilford.

16 Q And looking at this map, you see the light blue that's the
17 8th District on this exhibit over here, Congressman Watt?

18 A Yes.

19 Q Okay. Now, I think we looked at the map. The map seemed
20 to indicate that the 8th District was not in Mecklenburg County
21 under the 97 Plan, and this map seems to indicate it was pushed
22 into Mecklenburg County under the 2001 Plan. Do you know why
23 that happened?

24 A I don't have any idea.

25 Q Okay. Now, in 2000, was there a Republican incumbent

1 elected from the 8th District named Robin Hayes?

2 A I served with Robin Hayes. I'm not sure which years he
3 served.

4 Q And during the 2000 era, was he not defeated in District 8
5 by Congressman Kissell?

6 A He was defeated by Congressman Kissell at some point, yes.

7 Q Okay. And let's look at Congressional District 13. We
8 got a new Congressional District in 2001; is that correct?

9 A That's correct.

10 Q And do you recall who the Chairman of the Senate
11 Redistricting Committee was in 2001?

12 A I understand there was Representative Brad Miller, but I
13 mean, I didn't know that at the time.

14 Q So he was the Chairman of the Senate Redistricting
15 Committee in 2001?

16 A That's what I understand, yes.

17 Q And he played a role, then, in drawing District 13?

18 A I don't know the answer to that. I assume he did if he
19 was chair of the committee.

20 Q Okay. And District 13 runs from Raleigh and goes up
21 through Randall County, Pearson, Caswell, and then this arm
22 that reaches down into Alamance County; do you see that?

23 A Yes.

24 Q And then it goes over to Pearson, splits Pearson, and then
25 kind of squiggles down into Greensboro; do you see that?

1 A Yes, I see it on the map.

2 Q Okay. Do you recall, in Greensboro, what happened to your
3 97th District, the district you ran in in 2000, how did that
4 change in Greensboro under this Congressional Zero Deviation
5 Plan?

6 A Some of the precincts on the northern -- the most northern
7 end of the district went out of my Congressional District and
8 into the 13th District.

9 Q Right, and those were pretty heavily Democratic precincts?

10 A I assume they were. Greensboro is pretty heavily
11 Democratic in most of the precincts.

12 Q And do you know the racial composition of the precincts
13 that were taken out of your '97 version of the 12th District
14 and put in the 2001 version of District 13?

15 A I probably did at some point, but I don't -- I don't have
16 a recollection of what they were.

17 Q All right. And from 2002 through 2010, who was elected to
18 District 13?

19 A Brad Miller.

20 Q Right, the guy who was the Chairman of the Senate
21 Redistricting Committee; is that right?

22 A Well, he was, yeah, I guess. Yeah.

23 Q Before I leave, let's put up -- just to make this point.
24 So, Congressman Watt, this is a blowup of the 2011
25 Congressional Plan. And there's a copy of it, I believe, in

1 Tab 12 of the notebook that I've given you, and I just have a
2 couple of questions about this. Now --

3 A Is this the one that was approved finally?

4 Q It is.

5 A Okay.

6 Q You say you met with Senator Rucho twice?

7 A Yes.

8 Q The first time you met with him was in where?

9 A In Raleigh at the state legislative building.

10 Q All right. And do you recall someone named Brent Woodcox.

11 A I don't recall. I know there was a staff person in the
12 meeting. Is that who you're talking about?

13 Q Yes.

14 A I know -- I never got his name, I don't think.

15 Q Yes, sir. And during that meeting -- excuse me for that.
16 I didn't mean to hit you with the spotlight here. During that
17 meeting, did you ask the staff person to stop taking notes of
18 the meeting?

19 A I don't recall that I did. I don't believe I did.

20 Q Okay.

21 A I don't know how I would have had any authority over
22 Senator Rucho's staff person.

23 Q Okay. So you don't recall telling this staff person that
24 you didn't want him to take notes in the meeting?

25 A I don't recall it, but, you know, in context, this was a

1 meeting of friends, so I wasn't sure exactly what purpose even
2 having staff people there was. But I don't recall giving him
3 any such instruction, no.

4 Q All right. Now, Congressman Watt, I think -- do you
5 recall that back in the days of *Shaw*, there had a been
6 suggestion from the Justice Department that the 2nd
7 majority-black District should start in Charlotte and run to
8 the east? Do you remember your testimony on that?

9 A You mean my testimony today on that?

10 Q Yeah, we talked about that.

11 A I don't think I've testified about that because I don't
12 have any real knowledge of that district.

13 Q Okay. Did you recall that the Justice Department had made
14 an objection?

15 A Yes, I do remember they made an objection and said draw a
16 second voting rights district.

17 Q All right. And did you -- at the time, did you talk to
18 any of the congressmen that were in office right at that point
19 in time to discuss the political impact on the incumbent
20 Democratic congressman if districts had been drawn from
21 Charlotte all the way to Wilmington?

22 A I don't recall having any conversations with anybody along
23 those lines. I recall having some conversations with some
24 people that suggested that running a district from Charlotte,
25 an urban city, through -- down 74 would not create any district

1 that had any sensibilities to it. And I thought and I've
2 expressed on a number of occasions that the urbanness of the
3 12th Congressional District was one of the -- one of the
4 defining criteria that was important.

5 That's where you had all of your historically black
6 colleges and universities. That's where you had urban
7 residents in Charlotte, Greensboro, Winston-Salem, all the way
8 up to Durham, so -- but I don't recall having any discussion
9 with anybody about the politics of what impact it would have
10 politically.

11 Q Okay. In your discussions with Senator Rucho, was there
12 any discussion about -- in 2011, the possibility of drawing
13 your district from Charlotte right up to the east? Did that
14 ever come up in your meetings with Senator Rucho?

15 A I don't recall that it did, but if it did, I probably
16 would have suggested the same thing that I suggested a number
17 of times before, that running a district in that way would just
18 not make any sense in terms of cohesiveness of the district.

19 Q Okay. And do you recall having any discussion with
20 Senator Rucho about whether or not native Americans in the
21 Robeson County area would be cohesive with African-Americans in
22 Mecklenburg if a district was drawn in that direction?

23 A I recall having a discussion with him about Representative
24 McIntyre's representation of native Americans and
25 African-Americans, and -- let me see how I can put this

1 politely. I thought that Representative McIntyre missed a
2 number of opportunities to coalesce African-American voters and
3 native American voters into a single bloc as opposed to
4 dividing them constantly on a number of issues.

5 I don't recall any other conversation, and it
6 certainly wasn't in the context of them being in the 12th
7 Congressional District.

8 Q Okay. All right. Now, I'll put this back up for a
9 second. This is the 2001 Plan Congressional Zero Deviation?

10 A Which tab is that?

11 Q I can't remember. It might be 6. There's two tabs for
12 Congressional Zero Deviation.

13 THE COURT: Try 5.

14 MR. FARR: Five, I believe, is the 2000 Census --

15 THE COURT: Five and six.

16 MR. FARR: -- and 6 is the 2010 Census.

17 THE COURT: All right.

18 THE WITNESS: So I'm looking at 6, that's what this
19 is?

20 MR. FARR: Yeah.

21 THE WITNESS: Okay.

22 BY MR. FARR:

23 Q So I just wanted to ask you this question. The folks in
24 Guilford County that were in the 13th District, do you know
25 whether any of those voters had previously been in your 12th

1 District?

2 A I'm pretty sure some of them were, yes.

3 Q Okay. And so, under the 2001 plan, they were in the
4 13th District. Would you agree that was a strong Democratic
5 district for Congressman Miller?

6 A You know, I never really looked that closely at
7 Congressman Miller's district. I knew that it was making my
8 travel time shorter because it was making -- it was taking the
9 most northern part of my Congressional District out. And by
10 that time, I accepted the notion that it was better to have
11 more compactness, because while I started out advocating that
12 it was fine to go all the way to Durham, I also knew that my
13 experience was that it put a lot of miles on your car and a lot
14 of miles on your body to travel that distance to represent
15 people.

16 Q Okay. Did you have any discussions with Senator Rucho
17 about Section 5 and how that applied to voters in Guilford
18 County?

19 A I told him I understood that Greensboro -- that Guilford
20 County was a Section 5 district, and that I thought that to
21 retrogress might be a problem legally, but I also made it clear
22 to him that to ramp up the percentage of African-Americans was
23 not required based on my understanding of what the Voting
24 Rights Act and the case law was saying.

25 Q Did you ever say that you thought there would be a

1 Section 5 objection if the new plan didn't take care of the
2 voters in Guilford County?

3 A I think I said that there might be a problem if he
4 retrogressed from the percentages that existed. But I also was
5 very clear that increasing the minority percentage in this
6 district was just bordering on insanity, because, as I told
7 him, you know, I'm getting 65 percent of the vote. You're
8 going to give me a district in which I get 80 percent or more
9 of the vote, and that's not justified nor mandated by the
10 Voting Rights Act.

11 Q Okay. But isn't it true you -- you testified at trial,
12 Congressman Watt, you stated that you know a little bit about
13 Section 5; do you recall that?

14 A Yes, I do.

15 Q And are there ever any Section 5 objections raised when
16 the black community is fractured into different districts?

17 A I don't know the answer to that question. I know
18 something about Section 5, but I don't know whether -- every
19 objection that might get raised.

20 Q Okay. Now, looking at that Congress Zero Deviation, it
21 starts in Mecklenburg, it goes to Rowan, Davidson, Forsyth, and
22 Guilford County; correct?

23 A Yeah. You skipped over Cabarrus.

24 Q I skipped Cabarrus, that's right. So that's six counties;
25 correct?

1 A Yes.

2 Q And they're all divided?

3 A Yes.

4 Q There's not a single whole county in that district?

5 A That's correct. There never has been a single whole
6 county in the 12th Congressional District throughout its entire
7 history. Well, actually, I take that back. There was one
8 iteration where -- that I saw, I'm not sure I ever ran in that,
9 where all of Rowan County was in the 12th Congressional
10 District.

11 Q But the ones that were enacted were based on divided
12 counties?

13 A I can't remember whether I ran in that or whether it was
14 just a proposal that never got passed.

15 Q All right. Well, if it's a whole county, if there was a
16 whole county in one of these districts you ran in, it would be
17 the 98th District, and we've gone over that map, and I won't do
18 that again.

19 But what I want to do now is this is the 2011 plan.
20 And this plan is -- this is one that was enacted in 2011, and
21 it's in a portion of Mecklenburg, Cabarrus, Rowan, Davidson,
22 Forsyth, and Guilford; is that correct?

23 A Which tab is it?

24 Q This would be 12.

25 A Twelve. Yes, that's the same six counties -- parts of the

1 same six counties, but I assume a different configuration.

2 Q Okay. But the 2011 12th District is in portions of the
3 same six counties --

4 A That's correct.

5 Q -- that were included in the 97th District in which you
6 ran in the 2000 election?

7 A That's correct.

8 Q Now, Congressman Watt, when you met with Senator Rucho on
9 April 25th with the staff person, did he tell you he was going
10 to do what you asked him to do?

11 A No, he didn't, but he seemed receptive to what I was
12 suggesting.

13 Q So he was friendly?

14 A Yes. Well, he's always been friendly. I mean --

15 Q But he never said he was going to do what you requested?

16 A That's correct.

17 Q And did you have any discussions with him about how your
18 district related to the other districts that adjoined the 12th
19 District?

20 A No. I mean, obviously, if you move precincts, it's going
21 to have some impact, but my suggestion was a minimal degree of
22 change which would result in minimal impact on the surrounding
23 districts.

24 Q So minimal change would have resulted in the 8th District
25 remaining in Mecklenburg County?

1 A I don't know, because I was looking at it from the 12th
2 Congressional District, and what I was suggesting to him was
3 how he could minimally change the 12th Congressional District.
4 I wasn't having discussions with him about the 8th or other
5 Congressional Districts. I mean, I knew it would have some
6 impact, but we were not at that level of detail.

7 Q Okay. So you had no discussions with Senator Rucho about
8 the political impact of how District 12 would be drawn in 2011
9 on other Congressional Districts?

10 A I can't swear that I didn't have some discussion with him
11 about political impact. I recall saying to him that my
12 impression was that members of the delegation were happy with
13 their general districts and were not lobbying to change
14 substantially. That would be a political statement of sorts.
15 But I don't think I was in a position to really talk about much
16 other than the 12th Congressional District, which is what I
17 thought the meeting was designed to talk about.

18 Q Okay. I want to ask you about your meeting with Senator
19 Rucho in -- at his house.

20 THE COURT: Let me ask you a question. How much
21 longer do you have with this witness on cross, Mr. Farr?

22 MR. FARR: I would say 15, 20 minutes.

23 THE COURT: This is a good point, I think, to take a
24 lunch recess.

25 MR. SPEAS: Your Honor, Congressman Watt has some

1 plans and obligations. If we could finish before lunch, it
2 would be very helpful.

3 THE COURT: All right. We'll continue. Let's move
4 it along.

5 MR. FARR: All right. Thank you, Your Honor.

6 BY MR. FARR:

7 Q So, Congressman Watt, when you met with Senator Rucho at
8 his house, when was that again?

9 A It was a month or two after the meeting in Raleigh. I
10 didn't have -- I don't have a specific date for it, but I think
11 it was in June.

12 Q Okay. Was anyone else present for that meeting?

13 A Senator Rucho's wife came in briefly, and Representative
14 Samuelson was there for a part of the meeting.

15 Q Was Representative Samuelson there when you arrived?

16 A I think she was, but I'm not positive.

17 Q Was she there at the time you left?

18 A I'm not positive of that, either, but I think most of the
19 conversations I had with Senator Rucho, I got the impression he
20 wasn't trying to have it in front of Representative Samuelson
21 because he was embarrassed that he was being called on to do
22 something that he didn't appear to be comfortable with.

23 Q All right. So what room did you meet Senator Rucho in his
24 house?

25 A In his kitchen.

1 Q And was --

2 A We stood around. I mean, he had he donuts and coffee, and
3 we stood around a little island in his kitchen.

4 Q And did you go to any other room during the time you were
5 there?

6 A I think he may have taken me on a tour of parts of his
7 house, but we didn't -- I don't think we met in those rooms.

8 Q When he took you on a tour of his house, did you have any
9 discussion about redistricting, or did that occur in the
10 kitchen?

11 A You're taxing my memory to a point that I couldn't swear
12 to it, to be quite honest.

13 Q All right. So was the discussion that you've testified
14 about, did that occur in the kitchen, about ramping up the
15 district?

16 A You know, I have searched my mind because my recollection
17 is that it actually occurred as we were leaving. And Senator
18 Rucho appeared to want to show me the way back out of his
19 community and used that as an excuse to go out front. And my
20 recollection is that that's where the conversation -- there
21 wasn't much discussion about congressional redistricting in
22 this meeting. I mean, I can't -- one of the things that
23 surprised me was that he would call me at home on a weekend,
24 ask me to meet with him. I thought he was going to show me
25 maps.

1 There were no maps. And he appeared not very
2 comfortable having much discussion in front of Representative
3 Samuelson. I'm not even sure how she got to the meeting. I
4 didn't know she was coming to the meeting.

5 But at some point, he told me that his leadership had
6 told him that they were going to ramp -- or he must ramp up
7 these districts to over 50 percent African-American, both the
8 1st and the 12th, and that it was going to be his job to go and
9 convince the African-American community that that made sense.

10 And I said, Bob, that's just -- you're not going to
11 be able to do that, and I'm not going to be able to support you
12 if you do that because I know that it does not make sense. And
13 so, it is not required by the Voting Rights Act, it's not
14 mandated, it's not justified. And for you to say that you're
15 going to go and try to convince the black community that this
16 is in their interest is just not going to fly, and I'm not
17 going to sit idly by and say that this makes sense because I
18 don't think it makes sense.

19 Q So you said you wouldn't sit idly by?

20 A Well, I don't know if I used those exact words, but I
21 mean, you know, the essence of what I was saying was, look, I'm
22 not going to support you if you go out and say that this is in
23 the interests of the African-American community because I don't
24 think it is.

25 Q All right. Now, do you know for sure where that

1 conversation took place?

2 A I don't know for sure where that conversation took place.
3 I've already testified about that.

4 Q And do you know for sure whether or not Representative
5 Samuelson was present when the conversation --

6 A I don't think she was present when that conversation took
7 place, no.

8 Q You can remember she's not present, but you can't remember
9 where the conversation took place?

10 A Well, I can remember -- I can remember that I believed
11 that she was not present because it appeared to me that Bob was
12 going out of his way not to have her present. It seemed to me
13 that she was -- she invited herself to that meeting, it
14 appeared to me.

15 Now, you know, that's -- I can't swear to that,
16 either, but it did not appear to me that he was interested in
17 having this conversation in front of her.

18 Q So, Congressman Watt, you were the first person to serve
19 in the 12th District, and you've testified that you were
20 familiar with the *Shaw* litigation and the *Cromartie* case;
21 correct?

22 A Yes, generally.

23 Q Right. And you're aware that in a case like this, if the
24 plaintiff proves that race is the predominant motive, that the
25 district's subject to a more heightened level of scrutiny than

1 if race is not the predominant motive? Don't you understand
2 that?

3 A I think that there's some case law to that effect, yes.

4 Q Okay. And you were against a district that would draw the
5 black population above 50 percent in your district; correct?

6 A Wasn't so much that I was against it. I mean, from my
7 electoral advantage, it would've been a much, much easier
8 district to run in. But, you know, I just participated in the
9 judiciary committee, in reauthorizing the Voting Rights Act,
10 and I knew that the Voting Rights Act didn't stand for what he
11 was suggesting he was planning to do.

12 Q Okay. That's your understanding of the Voting Rights Act?

13 A Beg your pardon?

14 Q That's your understanding of the Voting Rights Act, and
15 you thought what Senator Rucho wanted to do violated your
16 understanding of the Voting Rights Act?

17 A That's correct, yes.

18 Q Okay.

19 MR. FARR: Now, may I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 MR. FARR: I have some exhibits I'd like to hand up
23 to the Court.

24 BY MR. FARR:

25 Q Now, Congressman Watt, I've handed you Defendant's

1 Exhibit 28. Do you remember this exhibit?

2 A Yes.

3 Q Was this a statement that you prepared?

4 A I did, yes.

5 Q And did you send this to Senator Graham to have him read
6 this at a committee hearing?

7 A I did, yes.

8 Q And so, this statement was prepared after you had your
9 meeting with Senator Rucho at his house?

10 A That's correct.

11 Q And, by the way, when you say the 12th District is drawn
12 over 50 percent, what census category are you relying on?

13 A I'm sorry, would you repeat that?

14 Q Do you know the different types of census categories for
15 African-Americans?

16 A I don't, no.

17 Q Okay. Now -- so this was a statement that you prepared to
18 have Senator Graham read at a committee hearing, and this was
19 prepared after you had told Senator Rucho that drawing your
20 district over 50 percent did not comply with the Voting Rights
21 Act; correct?

22 A That's correct.

23 Q And your understanding was that if Senator Rucho intended
24 to draw the district over 50 percent, that could be used as
25 evidence that race was the predominant motive for Congressional

1 District 12; is that correct?

2 A I don't know that I ever thought about it in that context
3 until you suggested it, but it probably would be, but that
4 didn't have anything to do with what I was doing.

5 Q All right. Now, in reading Defendant's Exhibit 28, which
6 was going to be read to the General Assembly pursuant to your
7 instructions, is there anything in this statement that you
8 prepared, Congressman Watt, disclosing this conversation you
9 say you had with Senator Rucho where he told you that
10 leadership was requiring him to ramp up the district over
11 50 percent?

12 A No.

13 Q And don't you think that would have been important
14 information for the General Assembly to have?

15 A Well --

16 Q Just yes or no, and then you can explain.

17 A It probably would be important information. But these
18 statements, until Senator Rucho started talking about them
19 publicly, I was treating as confidential conversations between
20 me and Senator Rucho. When he started to misrepresent what I
21 had said publicly, then that's when I started to say there's
22 some sinister motivations taking place here, so the answer to
23 your question is, no, it's not in here, but in a subsequent
24 letter, I put that in context. The idea that it was read on
25 the floor of the legislature puts it in context.

1 Q Okay. We'll get to that in a second, Congressman Watt.

2 But -- so this statement was designed to refute public
3 statements by Senator Rucho that she thought he had
4 misrepresented what she had said; is that correct?

5 A Yes.

6 Q Did Senator Rucho ever make a public statement saying that
7 you were the person who was responsible for drawing the
8 district over 50 percent?

9 A I think there are public statements that imply that, yes.

10 Q Not imply it. Did he ever say it? Did he ever say --

11 A I mean, I -- the last thing I'm going to do is go and look
12 at every statement that Senator Rucho has made on this subject.
13 I mean, that's just not something I --

14 Q Have you ever seen the statement by Senator Rucho where he
15 stated that he drew the district up over 50 percent because you
16 wanted it that way?

17 A I've seen a statement where he was very close to saying
18 that, yes.

19 Q What do you mean by "very close"?

20 A Well, he was making it sound like this was my idea to ramp
21 these minority percentages up, and I just knew that that was
22 not the case.

23 Q Do you have a copy of that statement?

24 A I'm sure -- I'm sure I would somewhere, but I don't have
25 it here on the witness stand with me.

1 Q Okay.

2 A I think if you read some of the exhibits where public
3 statements were being made, they were making it sound like,
4 somehow, this was my idea and Representative Butterfield's
5 idea, and I just thought that was a ludicrous thing to suggest.

6 Q Okay.

7 A Because I knew it wasn't my idea, and I didn't think it
8 was Representative Butterfield's idea, either.

9 Q All right, Congressman Watt, looking, again, at
10 Defendant's Exhibit 28, you wrote this to correct the record
11 for misrepresentations that you thought Senator Rucho made; is
12 that right?

13 A Yes.

14 Q Okay.

15 A That's what the first paragraph says. I wish to submit
16 this statement for the public record to provide additional
17 context to the selective and misleading characterizations of my
18 opinions that the chairs of North Carolina's Legislative
19 Redistricting Panel have entered into the record.

20 Q Okay.

21 A Yes.

22 Q And in this exhibit, you do not make -- you do not say in
23 this exhibit that Senator Rucho had publicly stated incorrectly
24 that you were the person responsible for having the district
25 drawn over 50 percent?

1 A Well --

2 Q Is that yes or a no, and then you can explain your answer.

3 A No, I do not -- well, I do say that because when I say to
4 provide additional context to the selective and misleading
5 characterizations of my opinions, what I'm saying is that he
6 has misrepresented what I've said. And to the extent that he
7 is either saying or implying that it was my idea to ramp these
8 districts up to 50 percent, he's just -- he's just out and out
9 not telling the truth.

10 Q Okay. But you give -- you give -- in this statement, you
11 give specific examples of statements you thought Senator Rucho
12 had misrepresented what you told him; right? Aren't there some
13 specific examples in this statement?

14 A The next to the last paragraph says, the chairs are
15 incorrect in implying that I, at any time, endorse their
16 configuration, which shifts large numbers of precincts in and
17 out of the 12th District in an apparent effort to increase the
18 African-American population in the district. If Senator Rucho
19 and Representative Lewis were really interested in
20 accommodating my preference by agreeing to model the new 12th
21 District after the current 12th District, as they profess on
22 page 5 of their July 1, 2011, statement, shifting four
23 precincts rather than the substantial number of precincts the
24 2011 plan proposes to shift would have been much more
25 accommodating as well as much more consistent with the criteria

1 they outlined.

2 I don't know how I can be anymore direct in
3 counteracting what they were doing.

4 Q But you don't say in here that Senator Rucho has
5 misrepresented that I was the one who asked for the district to
6 be drawn over 50 percent. That's not in here; is it?

7 A The first paragraph says that they've taken out of context
8 and selectively misused the characterizations of my -- of what
9 I told him. I don't know what else I can tell you on that,
10 sir.

11 Q I don't know what else you can tell me, either,
12 Congressman Watt.

13 MR. FARR: May I approach the witness?

14 THE COURT: You may.

15 BY MR. FARR:

16 Q Congressman Watt, I've handed you Defense Exhibit 27. Do
17 you have that in front of you?

18 A Yes, sir.

19 Q And is that a letter you prepared?

20 A It is, yes.

21 Q That's dated July 8?

22 A Yes.

23 Q And it's addressed to who?

24 A Oh, I'm sorry, to senator Rucho and Representative Lewis,
25 and copied to a number of people in the state legislature.

1 Q Okay. And the people who received the copies of this
2 letter were members of the Legislative Black Caucus?

3 A Yes.

4 Q And I see Senator Blue got a copy of this letter?

5 A Yes.

6 Q And this letter was prepared after your meeting with
7 Senator Rucho and Representative Samuelson at Senator Rucho's
8 house?

9 A Yes.

10 Q In this letter, did you report that Senator Rucho had told
11 you that he'd been ordered by leadership to ramp up the black
12 percentage in the district to over 50 percent?

13 A I didn't specifically mention that, no.

14 Q Okay. And did you state in this letter that Senator Rucho
15 had falsely or incorrectly stated publicly that it was your
16 idea to draw the district over 50 percent?

17 A Well, the second sentence says, I'm writing to correct
18 statements that you attributed to me in Claim 2 of the
19 statement that you earlier misconstrued or misrepresented.

20 Q And then, in the bottom part, the first page, you list
21 some of the things that you claim Senator Rucho didn't state
22 correctly; right?

23 A Some of them, yes.

24 Q Okay. And in the part of this letter where you gave the
25 list of the items that Senator Rucho had inappropriately

1 attributed to you, you did not say that Senator Rucho had
2 stated publicly that you were the person who wanted the
3 district ramped up over 50 percent.

4 A I'm sorry. Would you repeat the question? I'm trying to
5 read -- read what I said --

6 Q Okay, sure. Sure.

7 A -- because I haven't seen it in a while.

8 Q In that letter, you've got a list of items that you are
9 telling Senator Rucho and Representative Lewis, and two, four,
10 six, seven members of the Legislative Black Caucus, you've got
11 a list of items that you claim that Senator Rucho had
12 misrepresented as far as what you'd said to him; correct?

13 A Yes.

14 Q And the list of items that you have in this letter about
15 what Senator Rucho publicly misrepresented does not include a
16 statement by Senator Rucho where he had publicly said you were
17 the person responsible or in favor of drawing the district over
18 50 percent?

19 A That's correct, but of course, this is responding to Claim
20 2 of a particular statement, which is what the letter was
21 intended to do.

22 Q Okay. And I'm looking at the notebook that Mr. Speas gave
23 you, this white notebook that doesn't have an exhibit sticker
24 yet. And in that notebook, under Tab 30, there's a document
25 listed as Defendant's Exhibit 30. Could you find that?

1 A I have it, yes. That's the floor statement.

2 Q Yes, sir.

3 A Yes.

4 Q Tell us again what this was.

5 A Beg your pardon?

6 Q This was a statement that you prepared?

7 A It was the statement that was read into the record at --
8 in the legislative session by Senator Graham, yes --

9 Q Okay.

10 A -- that starting at page -- I guess --

11 Q I'm on 37 --

12 A -- 37.

13 Q -- is where I think it starts.

14 A Do I have the right statement? Maybe that's Congressman
15 Butterfield's statement.

16 MR. FARR: May I assist the witness, Your Honor?

17 THE COURT: You may.

18 THE WITNESS: Yes. Starting at page 37 is the letter
19 that I -- or statement I submitted.

20 BY MR. FARR:

21 Q Now, this statement was read during the session where the
22 redistricting plans were actually enacted?

23 A I don't know that I can verify that, but I understood it
24 was read on the floor during part of the debate, yes.

25 Q Okay. If you turn -- don't lose your place on 37, but if

1 you turn to the front of that Exhibit 30, this indicates it's a
2 transcript that was prepared on July 25, 2011 --

3 A Yes.

4 Q -- is that right?

5 A Yes, I see that.

6 Q Okay. So you had prepared a statement that you asked
7 Senator Graham to read for you at a session of the legislature
8 on July 25, 2011; is that right?

9 A Yes.

10 Q Okay. Now, at the time that you wrote this statement, had
11 you had any discussions about how the politics of the proposed
12 plan would change the Congressional Districts? Had anyone
13 talked to you about that?

14 A I don't remember having any specific conversations about
15 any political consequences of any of these things.

16 Q So you never had anyone tell you that this new plan was a
17 Republican gerrymander?

18 A I don't recall anybody telling me that. Maybe if you told
19 me who you were talking about telling me, that might jog my
20 memory.

21 Q Okay. Now, when you submitted this statement, you knew
22 your district was going to be drawn over 50 percent in at least
23 one census category?

24 A I knew that that's what they were proposing. It had not
25 been adopted.

1 Q Okay.

2 A And I was trying to express my opinion that it should not
3 be adopted.

4 Q So you were -- you would have favored not adopting the
5 plan that was ultimately adopted?

6 A That's -- yes, I think that's correct. I would have
7 favored not adopting it, yes.

8 Q Okay. And this statement that was read on July 25th
9 during the legislative session that you prepared, anywhere in
10 this statement do you report your conversation with Senator
11 Rucho where he told you that his leadership had ordered him to
12 ramp your black percentage in your district over 50 percent?

13 A Probably not.

14 Q And anywhere in the statement that you prepared, did
15 you -- that was read on July 25th, did you state that Senator
16 Rucho had publicly misrepresented that you were the person
17 responsible for ramping the district up over 50 percent?

18 A Well, I've already been on record a couple of times about
19 that already. I don't know whether there's -- I mean, without
20 going through and reading it again, I haven't looked at this in
21 quite a while, but I don't know the answer to your question
22 without going all the way through the statement and reading.

23 Q Well, please do so, because it's only three pages.

24 A At the bottom of page 37, I say, and I want to make it
25 clear that my statement -- any statement or implication that

1 either plan was drawn to accommodate the wishes that I
2 expressed is inaccurate and untrue.

3 Q Okay. Anything else?

4 A In the middle of page 39, I say, to maintain as a joint
5 statement of Senator Rucho and Representative David --
6 Representative Lewis regarding the release of the Rucho-Lewis
7 Congress 2 does, that maintaining the 12th District as a very
8 strong Democratic district will make adjoining districts more
9 competitive for Republican candidates is seriously in error.

10 So, yeah, there were a couple of places where I took
11 issue with what he was saying. But if you're asking did I --
12 did I try to embarrass Senator Rucho publicly, the answer is
13 no.

14 Q Okay. And I'm glad you pointed out that statement,
15 because I want to ask you some questions about that on page 39.
16 When you said that maintaining the 12th District as a very
17 strong Democratic district will make adjoining districts more
18 competitive for Republican candidates is seriously in error,
19 what did you mean by that?

20 A Well, if you pack all the black people into one
21 Congressional District, you'll make my election a lot easier,
22 and you'll make adjoining Republican elections a lot easier for
23 them. It won't make them more competitive. It won't make my
24 district more competitive, and it won't make their district
25 more competitive. It'll make both districts easier.

1 And for them to be representing to the public that
2 this was designed to make Congressional Districts more
3 competitive, which is what they had said in their statement,
4 was inaccurate.

5 Q Did they say more competitive or more competitive for
6 Republicans? You say here, more competitive for Republicans.

7 A Well, more competitive for Republicans. The flip side of
8 that coin is less competitive for Democrats. And more
9 competitive for Democrats is -- the flip side of that coin is
10 less competitive for Republicans. I don't know how you can --
11 I mean, they're opposite sides of the same coin. I'm not sure
12 what you're driving at.

13 Q But you agree that drawing the district the way your
14 district was drawn in 2011 benefited Republican candidates in
15 adjoining districts?

16 A Benefited me politically by making my district less
17 competitive. I would win at over 80 percent of the vote, which
18 I did, and it would make adjoining Republican districts less
19 competitive because they would -- they would find it easier to
20 win.

21 Q Okay. Well, what's -- well, I've got -- I'll finish up
22 with these questions, Congressman Watt, then I'll be done.

23 What about in 2010, Congressman Miller was a Democrat
24 and was elected in the 13th District. Does that jar with your
25 memory?

1 A Yeah, that's correct.

2 Q Okay. And in 2012, under the New Congressional Plan, was
3 Congressman Miller elected in the 13th District?

4 A I don't think he was, no.

5 Q And wasn't George Holding elected?

6 A That's correct.

7 Q And isn't he a Republican?

8 A That's correct.

9 Q And in the 8th District in 2010, which adjoins the
10 12th District -- in 2010, wasn't Congressman Kissell elected?

11 A That's correct.

12 Q And in 2012 under the 2011 Congressional Plan, Congressman
13 Kissell lost to a Republican?

14 A That's correct. And by taking black votes and packing
15 them into my Congressional District, he made all the districts
16 less competitive, yes. So I don't know how that's inconsistent
17 with what I've said.

18 Q So by drawing the district the way that they drew it, it
19 made many other districts more favorable for Republicans; is
20 that right?

21 A It probably did; less competitive.

22 MR. FARR: No further questions, Your Honor.

23 THE COURT: Redirect?

24 MR. SPEAS: Couple of very quick, clarifying
25 questions, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SPEAS:

3 Q Congressman Watt, you were asked -- handed Exhibit J,
4 Defendant's Exhibit No. 27, which is your July 8, 2011, letter.
5 Do you have that?

6 A Yes.

7 Q And in that, do you refer to a statement made by Senator
8 Rucho and Representative Lewis regarding June 23's public
9 hearing in the first paragraph?

10 A Yes.

11 Q And in the third paragraph, do you refer to Claim 2 of
12 that letter or that public statement?

13 A That's correct.

14 MR. SPEAS: May I approach the witness quickly, Your
15 Honor?

16 BY MR. SPEAS:

17 Q Congressman Watt, I'm placing in front of you -- I'll try
18 to get the exhibit numbers right, Your Honor -- Defendant's
19 Exhibit D-5.1, which is the collection of public statements
20 issued by Senator Rucho and Representative Lewis. And I am
21 turning to --

22 THE COURT: Which tab, so we can find it?

23 MR. SPEAS: June 22, 2011, statement is entitled,
24 Statement by Representative Bob Rucho and Representative David
25 Lewis regarding proposed VRA exhibits.

1 Have you found that, Your Honor?

2 THE COURT: Just a second, let me catch up. June 22,
3 you said?

4 MR. SPEAS: It's Tab 5. It's the June 22, 2011,
5 statement. It's in the upper right-hand corner.

6 THE COURT: Okay. Handwritten up there --

7 MR. SPEAS: Handwritten.

8 THE COURT: -- 6-22? Okay.

9 BY MR. SPEAS:

10 Q Let me show you that, Representative Watt, and ask you if
11 you know whether a Congressional Plan had even been released
12 on -- as of that date, June 22, 2011?

13 A The question is, again, what?

14 Q Does that statement, the June 22 statement, concern only
15 the State House and State Senate Plans and not the
16 Congressional Plan?

17 MR. SPEAS: Your Honor, if I may approach the
18 witness.

19 THE COURT: You may.

20 BY MR. SPEAS:

21 Q Congressman, if you would look at the 96 document in this
22 ledger, it's the July 1 statement by Representative Lewis and
23 Senator Rucho. And it concerns relating to the Proposed
24 Congressional Plan; is that correct?

25 A That's what the title says, yes.

1 Q So, from that document, it appears that the Congressional
2 Plans weren't even made public until July 2011?

3 A I don't know the answer to that. I mean, I wasn't
4 tracking the timing of any of this. I'm sorry.

5 MR. SPEAS: Thank you very much. I don't have any
6 other questions.

7 MR. FARR: No questions, Your Honor.

8 THE COURT: All right. You may step down.

9 THE WITNESS: Do I leave these here?

10 MR. SPEAS: Please.

11 MR. SPEAS: Your Honors, Congressman Watt needs to
12 pursue other business. I assume he's able to.

13 THE COURT: Any objection to excusing Congressman
14 Watt?

15 MR. FARR: No, we're happy to excuse him.

16 THE COURT: All right. You may be excused. We'll
17 stand in luncheon recess until quarter to three.

18 (At 1:26 p.m., break taken.)

19 (At 2:47 p.m., break concluded.)

20 THE COURT: All right. Where are we? Are the
21 plaintiffs ready to proceed with their next witness?

22 MR. SPEAS: Yes, Your Honor. The plaintiffs would
23 call Representative Butterfield to the stand.

24 (Witness sworn by the clerk.)

25

1 G.K. BUTTERFIELD,

2 PLAINTIFF'S WITNESS SWORN AT 2:48 p.m.

3 DIRECT EXAMINATION

4 BY MR. SPEAS:

5 Q Would you state your name for the record, please.

6 A GK Butterfield. The G is for George, the K for Kenneth.

7 Q Would you tell the Court a little bit about where you grew
8 up and where you went to school?

9 A I'm a native of Wilson, North Carolina, born in 1947, and
10 went to the public schools there in my home community, both
11 elementary and high school. Graduated from high school in
12 1965.

13 During those years, I was very active in what we now
14 refer to as the Civil Rights Movement, as was my father before
15 me. After high school, I went on to North Carolina College at
16 Durham, later to become known as North Carolina Central
17 University.

18 After my third year in college, I was drafted into
19 the US Army. I served two years in the Army, discharged from
20 the Army in 1970, and returned to Durham to complete my
21 undergraduate work, and then went on to the law school there at
22 North Carolina Central University, graduating in 1974.

23 Did not pass the bar exam in 1974. I worked for a
24 law firm in Warren County called Clayton & Ballance. And the
25 following year, 1975, I took the bar exam and passed it and was

1 admitted to the practice of law.

2 Q Tell us a little bit about your legal career.

3 A Well, my legal career, in earnest, started in 1975, even
4 though I had one year working with a law firm prior to that as
5 a lawyer in a small town with another lawyer, lifelong friend
6 named Milton F. Fitch, Jr. now Superior Court Judge Fitch.

7 The two of us started -- and Quentin Sumner, who is
8 also a Superior Court Judge, we started a law firm known as
9 Fitch, Butterfield & Sumner. And we continued under that
10 arrangement for several years.

11 After that, Judge Sumner withdrew from the firm and
12 started his own firm with his spouse, and Milton Fitch and I
13 continued the law practice. And later, a man named James A.
14 Wynn, Jr. joined the law firm to be known as Fitch, Butterfield
15 & Wynn. I continued to practice law until I was elected to the
16 bench some years later.

17 Q Okay. And you served on the North Carolina Superior Court
18 bench?

19 A I did serve on the bench. Prior to getting elected as a
20 superior -- resident Superior Court Judge, I was a typical
21 small-town lawyer. In the early years, I handled the speeding
22 tickets and the misdemeanor district court cases and the like,
23 and then graduated and became a personal injury lawyer. And I
24 began to do some probate work, and enjoyed that very much.

25 And then, in 1982, the US Supreme Court changed

1 the -- what is required for a Section 2 violation from the
2 intent standard to the results, or effects, standard. And so I
3 developed an interest in voting rights litigation, primarily
4 because my father, in 1957, had become the victim of a
5 miscarriage of justice when he served on the Board of Aldermen
6 in my hometown.

7 While my family was on vacation in March of 1957, the
8 City Council abruptly changed the method of election from
9 district elections to at-large election. And my dad had been
10 the first African-American to serve on the board in its
11 history. And when we returned from our vacation, we found that
12 the method of election had been changed, and he was soundly
13 defeated in 1957. I was 10 years of age and remember it very
14 vividly. And there was a challenge to the election system.

15 Also, there was a provision enacted that prohibited
16 single-shot voting. So not only did it dissolve a district
17 election system, but it also created a requirement, a full
18 slate requirement which prevented single-shot voting. And that
19 really angered the African-American community, as you can
20 imagine.

21 In 1959, another gentleman in the community ran, my
22 pastor, and he was soundly defeated in 1959. And at that
23 point, the NAACP took the litigation. And the case went to the
24 US Supreme Court -- well, the Supreme Court denied cert in the
25 case, but it was lost at every level.

1 And so, as a young -- impressionable young man, I
2 noticed all of this and didn't quite fully understand it, but
3 that forced me to want to not only become a lawyer, but to go
4 into the political arena. And so, my law practice evolved into
5 a voting rights practice because I wanted to try to remedy some
6 of the past miscarriages of justice. So I did voting rights
7 litigation for some years.

8 The legislature created, as a result of litigation
9 under the Voting Rights Act, eight opportunity districts for
10 black lawyers to get elected to the Superior Court bench. It
11 was settled; it was not a verdict by the Court. It was settled
12 by the legislature, and eight seats were created -- eight
13 opportunities were created across the state. And I ran in one
14 of those districts in 1988 and was elected and sworn into
15 office as resident Superior Court Judge January 1st of 1989,
16 and served the next 11 years as a Superior Court Judge.

17 In 2001, Governor Easley appointed me to the State
18 Supreme Court. I. Beverly Lake, Jr., had defeated Chief
19 Justice Henry Frye in the election of 2000, thereby creating a
20 vacancy. When Lake moved from Seat 7 to Seat 1, there was a
21 vacancy in Seat No. 7, and Governor Easley, one of his first
22 acts as governor was to appoint me to the State Supreme Court.

23 I stayed on the Court for nearly two years, and I was
24 defeated in the November 2002 election because we, as you
25 certainly recall, had partisan election judges. And even

1 though my opponent was not known and did not do any
2 fundraising, did not do very much campaigning, he beat me by a
3 margin of 50 to 48 because of the straight ticket voting for
4 then candidate Elizabeth Dole.

5 And so, after serving nearly two years on the Supreme
6 Court, Governor Easley re-appointed me, this time as a Special
7 Superior Court Judge, and that's where I stayed until I was
8 elected to Congress.

9 Q And you first ran for Congress in 2004?

10 A I ran in 2004 in a Special Election. Around March of
11 2004, my predecessor in this office announced he was not
12 running for re-election, and then two weeks later announced
13 that he was actually vacating the seat. That created a vacancy
14 for the House. There had to be a Special Election under the
15 law, and Governor Easley set both the regular primary and the
16 election for the remainder of the term, two elections on the
17 same ballot on the same day. It was a little confusing. But I
18 was elected on July 20th of 2004 and continue in that position
19 today.

20 Q And you have been re-elected to Congress in 2006, 2008,
21 2010, 2012, and 2014?

22 A That is correct.

23 Q Okay. Tell the Court a little bit about your work in
24 Congress.

25 A Well, believe it or not, I'm now considered a senior

1 member of Congress. There's been a tremendous turnover in the
2 last 10 years. I went in as Member No. 435, and now I'm No.
3 140 in order of seniority in the House on the Democratic Side.
4 I am a Democrat. On the Democratic side, I am a Chief Deputy
5 Whip of the House Democratic Caucus, and I'm also honored to be
6 the chairman -- as was Congressman Mel Watt some years ago,
7 Chairman of the Congressional Black Caucus.

8 Q Okay. Now --

9 A And served on the Energy & Commerce Committee in the House
10 of Representatives.

11 Q Now, let's turn just a few minutes to the districts from
12 which you were elected prior to the 2011 redistricting that is
13 at issue here. Do you recall the approximate African-American
14 voting-age population in your district from 2004 through the
15 2010 election?

16 A It was in the 47 percent range, I believe.

17 Q Okay.

18 A Forty-seven, yes.

19 Q And like Representative Watt, do you remember your margins
20 of victory in those districts?

21 A They were comfortable margins of victory, and I can refer
22 to the documentation to give you the exact margins.

23 Q If you would, please.

24 A Yes. In 2004, 63.88 percent. I was unopposed in 2006.

25 In 2008, 70.28 percent. In 2010, 59.31 percent. That was my

1 lowest tabulation in all of my years. In 2012, 75, that was
2 after the new map went into effect, 75.32. And in 2014,
3 73.38 percent.

4 Q Okay. Let's talk about the redrawing of Congressional 1
5 in 2011. What were the differences in the district from 2010
6 until redrawn in terms of the percentage of African-American
7 voters?

8 A Well, I was expecting an insignificant change. I knew we
9 had to pick up 97,500 new citizens in the district. I was
10 aware of that. But I thought it could be done without much
11 disruption to the core district that I was familiar with. And
12 that's what my expectation was.

13 Q Okay. And did the new district divide more counties than
14 the prior -- did the new plan divide more counties than the
15 prior plan?

16 A Well, in the prior district -- I said this in all of my
17 speeches until I -- and I remember it so well, 23 district --
18 23 counties in the district, 13 whole counties, 10 parts of
19 counties. That was the division between whole and parts of
20 counties.

21 And after the redrawing of the districts, I only had
22 five whole counties out of 24, 19 portions of counties.

23 Q So the present district is composed of five whole counties
24 and 19 pieces of counties?

25 A Five out of 24 counties are whole counties.

1 Q Okay. Now, at some point, were you approached by
2 representative -- excuse me, Senator Rucho --

3 A Yes.

4 Q -- and Representative Lewis with respect to the plan?

5 A Yes, I had more interaction with Senator Rucho than I did
6 Representative Lewis, but I did see both of them on at least
7 one occasion.

8 Q Okay. And would you describe to the Court those
9 conversations.

10 A Mr. Speas, I've been trying to recall those events with
11 accuracy so that I could be completely accurate in my
12 testimony. I've gone back and researched my calendar from the
13 year 2011. It appears to me, and I have a calendar entry with
14 me today in case it is in dispute, but on April 21, at
15 2:30 p.m, I met with Senator Rucho in Room 300A there in -- I
16 think that's his conference room in his office building. Yes.

17 I was requested to come to Raleigh to meet with
18 Senator Rucho and Representative Lewis, and I did. After
19 talking with Representative Watt, I determined that I was
20 probably the first to be called forward to have these
21 confidential meetings, and I went ahead of Mr. Watt.

22 And so I traveled to Raleigh and had a -- I met
23 Senator Rucho for the very first time. He and I had small
24 talk. He's a dentist. My dad was a dentist for 50 years, and
25 so we had that conversation. And then, it evolved into the

1 conversation that was relevant, and that was the redistricting
2 plan.

3 I might say, Mr. Speas, that my chief of staff at the
4 time was named Tonya Williams. Tonya Williams is and was a
5 very distinguished lawyer. For five years, she worked for the
6 Senate President Pro Tem, Mark Basnight. She was his legal
7 counsel, and as such, she was his legal counsel during the
8 prior round of redistricting.

9 And as I was preparing to go to Raleigh to meet Rucho
10 and Lewis, I was admonished dozens of times -- not just a
11 couple of times, but dozens of times -- by my chief of staff to
12 be extremely circumspect and careful in how I had the
13 conversations with these two men, these two chairmen in the
14 legislature, because she explained to me, you know, her
15 experience when she served as legal counsel, and that any
16 little thing that you say could be taken out of context and
17 could be exploited if there was a motive to do that. And so
18 she admonished me so much, that I was tired of hearing her say
19 it, but she admonished me severely to do very little talking
20 and to allow these gentlemen to do most of the talking.

21 Q Did you take her advice?

22 A Absolutely, I did. That's why I believe my testimony
23 today may be a little less valuable than the other two
24 witnesses, yes.

25 Q At some point, did you see the proposed new version of

1 Congressional District 1?

2 A Mr. Speas, prior to going to Raleigh -- of course, all of
3 us have friends in the legislature, and I informally talked
4 with many of the colleagues of these two gentlemen. And I was
5 told that there was a serious conversation afoot about adding
6 Guilford County to the 1st Congressional District. And I
7 thought the source of that was mistaken.

8 And after hearing it four or five times, I then gave
9 credibility to the assertion that Guilford County was being
10 considered as an addition to the 1st Congressional District.
11 And I just absolutely could not imagine how Guilford County,
12 where we sit today, could be a part of the 1st District, which
13 extends all the way to Elizabeth City, North Carolina. And I
14 was told that it was probably because Guilford County is a
15 Section 5 county, and there was a wish on the part of the map
16 drawers, the committee chairs, to include Section 5 counties
17 within the new 1st District.

18 And so when I got to Raleigh and met with Senator
19 Rucho and Representative Lewis, my recollection is that
20 Representative Lewis did not stay in the meeting very long, but
21 he did extend a hand of friendship to me, and we chatted for a
22 few minutes. But at the end of the day, it was Senator Roucho
23 and myself in this meeting.

24 Senator Rucho had a map available for me, and it was
25 a very large map. And I'd seen redistricting maps many times

1 before. I was, as I said, a voting rights attorney, and so
2 I've seen those. I was the spokesman for the class. You may
3 may not know this, Mr. Speas, but I was the spokesman for the
4 class in the *Gingles* case. I was not an attorney of record,
5 but I was the spokesman for the class. I'm the one that
6 presented the single-member district redistricting map to the
7 North Carolina legislature and was laughed at because it
8 eliminated multi-member districts, but now it's the law of
9 North Carolina.

10 But I looked at this very large map on the table, and
11 I found it -- and Senator Rucho told me that because of the
12 population deficit, that they had to find roughly 100,000 new
13 citizens to come into the district, and I acknowledged that I
14 understood that. He said that it would probably be difficult
15 to get a mass of people in my traditional district and to meet
16 the one person, one vote goals, and that it needed to be a zero
17 deviation district, which I never understood, still don't
18 understand to this day because I think there can be -- I think
19 there is some tolerance in deviation. But the legislature has
20 adopted this zero tolerance formula.

21 But I told him that I really wanted my traditional
22 district, and if we could sort of enlarge it around the edges
23 and find 97,000 people, it would be great. But he mentioned to
24 me that we needed an urban community in order to make the
25 numbers work. And I didn't dispute that, even though I --

1 because I didn't have the resources to draw the map on my own.

2 And so I began to probe and ask him, well, what does
3 that mean? And he said, well, Raleigh's a possibility,
4 Durham's a possibility. And I said, well, I've heard about
5 Greensboro, you know, is Greensboro on the table? And he
6 acknowledged that there had been a conversation, but it
7 probably it would not be -- would not make the final map.

8 And so, I did not want to get into a situation
9 whereby it would be reported in the media that I was choosing
10 one urban area over another. I have hundreds of friends in
11 both communities and would do -- politically, I would do very
12 well in either community. And so I did not -- I went to
13 college in Durham and know a lot of people there. But Raleigh,
14 I'm right at home in Raleigh as well. And so, I was very
15 careful, extremely careful not to intimate in any way that I
16 preferred one community over another.

17 I basically said to Senator Rucho, you have the
18 computers, you have the experts. What I'm hoping for and
19 expecting is a lawful map that protects minority voting
20 strength in the district.

21 And then, as we perused the map, I honed in on Wake
22 County because that would be a new area in the district. And
23 in order to get my bearings, I asked where was Shaw University.
24 And Senator Rucho did not know where Shaw University was.
25 Didn't expect him to know; he's from Charlotte.

1 And so, he got on the phone and he summoned one of
2 his staff members to the room, or he may have already been in
3 the room, I'm not sure about that. But the staff member and I
4 leaned over the table to try to identify the campus of Shaw
5 University, because if I were to get Wake County, certainly, I
6 wanted the HPCUs. There are two in Raleigh. St. Augustine's
7 College is the other. I wanted those two campuses to be in the
8 Congressional District.

9 And so, as we got our bearings and I figured out what
10 I was looking at, I said, okay, this is Shaw, this is the state
11 capitol, this is St. Augustine's College, this is South
12 Raleigh. I have my bearings now, and I see what you're talking
13 about -- what you're talking about. And Senator Rucho said,
14 well, do you like it? And I said, I'm not giving you an
15 opinion, you know. I see what you're proposing. I don't have
16 an opinion one way or another about whether I want it or
17 whether I don't want it. I didn't tell him that Tanya told me
18 to be quiet, but I was certainly following her advice to the
19 tee. And I was very proactive not to, even in my body
20 language, to try to suggest that I preferred one map over the
21 other. So the meeting came to a cordial end, we shook hands,
22 and we departed.

23 I returned to Washington and told my staff and all of
24 my confidants about it. And I was mentally preparing to pick
25 up Wake County because I thought that's the way it was going to

1 be. I began politically accumulating mailing lists and all of
2 the other things that politicians do in Wake County, and
3 Senator Rucho and I had exchanged cell phone numbers.

4 One day, I received -- and it wasn't but a few days,
5 I received a telephone call from Senator Rucho indicating that
6 everything that we had talked about in his conference room was
7 off the table. Just wipe the slate clean, forget the
8 conversation ever happened, it's going to start over. And he
9 continued to indicate to me that the majority minority
10 districts, under the law, under *Strickland*, had to exceed
11 50 percent. And while I had been out of voting rights
12 litigation for many years, because as a judge, you don't get
13 involved in voting rights litigation, at least at the state
14 level. These gentleman certainly do. But I lost track of
15 jurisprudence of voting rights for the 15 years that I was on
16 the bench.

17 And so, he told me that their lawyers were telling
18 him that minority districts had to exceed 50 percent. And I
19 said, wow, I did not know that, you know. I don't know
20 anything about *Strickland*. I remember *Gingles*, but I don't
21 know very much about *Strickland*.

22 And so I just said, you know, that's what the law
23 requires, then that's what it has to be. But I didn't believe
24 it then, and I don't believe it now.

25 And so, after the telephone call, then I'm anxiously

1 awaiting what the new map will look like, and that's when I saw
2 Senator Floyd McKissick, Jr., one day. And Floyd said, you
3 know, how would you feel if Durham were added to your district?
4 And I said, I don't know. I was very coy with Floyd as well.
5 And he says, well, that's the conversation now. And I said,
6 well, I look forward to the final maps.

7 And sure enough, the final maps were being readied
8 for public display. And my records show that on June 21, 2011,
9 at 2:00 in the afternoon in Room 328 of the legislative office
10 building, I again met with someone, and I think the someone was
11 Senator Rucho. My notes say that it was. I don't believe
12 Representative Lewis came to that meeting, but I may be in
13 error on that.

14 But that's when I was told that Durham would be in
15 the district. But that was -- that the law mandated that
16 50 percent of the district must be greater than 50 percent in
17 African-American voter age population, that it had to be a zero
18 tolerance in the deviation, and there needed to be communities
19 of interest and compactness, to the degree that it could be
20 compact, and that this was the best map they could come up
21 with. And I didn't say very much, and I left the meeting.

22 And a few days later, my chief of staff stormed into
23 my room and wanted to know why I would agree to the
24 inclusion -- that I would say that I would prefer one county
25 over another. And I assured Tonya that that absolutely did not

1 happen. And she said, well, Senator Rucho has put it in his
2 report, that you made these statements to him, and that your
3 statements were a motivating reason why the district was drawn
4 the way it was. And I was very upset about that then and
5 continue to be today.

6 Q At some point, did you come to write a letter to Senator
7 Rucho with regard to your concerns?

8 A I certainly did. And I --

9 Q And if you would, Representative Butterfield, turn to the
10 Butterfield tag in the notebook in front of you, and then turn
11 to the single exhibit which is there, which is labeled
12 Defendant's Exhibit D19. And I would ask you if that is a
13 letter you wrote on July 22, 2011, to Senator Rucho and
14 Representative Lewis?

15 A I authored the letter dated July 22, 2011, which is
16 Exhibit No. D19.

17 Q And was this letter read on the floor of Senate by Senator
18 Ed Jones?

19 A I am informed that the letter was, indeed, read by the
20 late Senator Ed Jones at my direction.

21 Q And was Senator Jones an African-American member of the
22 North Carolina Senate?

23 A He was, and a constituent.

24 Q And a constituent. And would you read for the Court your
25 final paragraph in that letter.

1 A The final paragraph reads as follows.

2 Quote: "Using the Voting Rights Act as justification
3 to advance partisan goals in the rest of the state is
4 unconscionable and mocks the very spirit and purpose of the
5 law. The voters in District 1 and the citizens of our great
6 state deserve better. I urge the committee and the members of
7 the North Carolina General Assembly to heed the concerns
8 expressed by the public and honor legal protections designed
9 and enforced to protect minority voters." End of quote.

10 Q All right. You've spent a lifetime in Eastern North
11 Carolina.

12 A I have.

13 Q And over those years, in lots of capacities, have you
14 developed an understanding of the voting patterns in that area
15 of the state?

16 A I don't think there's anyone in Eastern North Carolina
17 more uniquely equipped to evaluate the voting patterns in
18 Eastern North Carolina. I don't do it scientifically, but I
19 have experienced it in one way or the other since 1968.
20 Probably since 1957, when my dad was defeated. But I was a
21 child then, so I will pick it up in 1968. I've been involved
22 in every election in Eastern North Carolina beginning in 1968.

23 Q And the present African-American voting-age population in
24 your district is in excess of 52 percent; is that correct?

25 A Currently, my records suggest that the black VAP is

1 52.65 percent.

2 Q Okay. And based on your years in electoral politics in
3 Eastern North Carolina, is that number necessary to allow
4 African-American citizens to elect their candidate of choice --

5 A No, it's not necessary. It's excessive. It's
6 unnecessary. When the black voting-age population was
7 47 percent, I did quite well. And with 52 percent, you can see
8 a marked increase in my electoral success. And I can tell you
9 that 52 percent is not necessary in order for not just me, but
10 any African-American candidate or any candidate who is the
11 choice of the African-American community to win, 47 percent is
12 sufficient.

13 Q And I believe you testified a few moments ago that after
14 the redistricting, you won in 2012 by 75 percent?

15 A Yes, sir. It went from 59 percent in 2010 to 75 percent
16 in 2012.

17 Q And this past time, it was 73 or so percent?

18 A 73.38 percent.

19 Q Okay. Based on your many years in politics and public
20 life, tell the Court what you -- your view of the level of the
21 extent to which white citizens in Eastern North Carolina will
22 vote for black citizens.

23 A Mr. Speas, there has been racially polarized voting all
24 across North Carolina since the beginning of our democracy.
25 That is not in dispute. What may be somewhat in dispute is the

1 severity of the polarization.

2 And what needs to also be a part of this conversation
3 is what region of the state are you addressing the polarization
4 question, because no one size fits all.

5 Q Is Charlotte different than Wilson?

6 A I was listening to Senator Blue's testimony today, and
7 there's no resemblance between voting behavior among white
8 citizens east of Interstate 95 as opposed to the urban areas of
9 Wake and Mecklenburg County. It's regrettable, but that is a
10 fact.

11 Q In Eastern North Carolina, what is your judgment as to the
12 level of white voting?

13 A My judgment is not scientific, Mr. Speas.

14 Q I understand.

15 A But it is based on 40-plus years of direct voter
16 participation. I round it off just for discussion purposes. I
17 would say that most African-American candidates -- and there
18 are exceptions. Most African-American candidates and most
19 candidates who are the choice of the African-American community
20 generally can never depend on two out of three white voters.
21 In other words, 66 percent of white voters, in my opinion, will
22 never vote for an African-American candidate for most
23 positions.

24 And as I said, there have been exceptions, and I
25 acknowledge that. But the converse of that is also true.

1 About 33 to 35 percent of white voters will vote for a
2 qualified candidate who is African-American or the choice of
3 the African-American community if they prove their metal.

4 MR. SPEAS: Okay. Thank you very much, Congressman
5 Butterfield. I have no more questions at this point.

6 THE COURT: Cross-examination?

7 MR. PETERS: Thank you, Your Honor.

8 Good afternoon, Congressman Butterfield. My name's
9 Alec Peters. I'm with the North Carolina Attorney General's
10 Office. And I do have a few questions for you.

11 CROSS-EXAMINATION

12 BY MR. PETERS:

13 Q First, I noted that you took some notes up with you to the
14 stand. And may I ask you what it was you took up with you?

15 A You can. It's a table that I had personally typed in my
16 office just for reference purposes, and you're certainly
17 welcome to view it.

18 I have my black voter age population figures both
19 before and after 2011. I have the dates on which I met with
20 Senator Rucho, and I have some what we call in Washington
21 talking points, one size fits all. Minority percentages don't
22 make sense. The other is polarized voting is severe in Eastern
23 North Carolina.

24 The other talking point, and maybe that's not a good
25 way to describe it. The other point is two out of three white

1 voters will not vote for the choice of the African-American
2 community.

3 The next point is only one of three white voters will
4 consider voting for an African-American candidate.

5 And the other is basically a restatement of the law,
6 which says when race is a predominant factor, then the remedy
7 must be narrowly tailored.

8 And then I have 13 whole counties and five whole
9 counties. And then I have the names of three judges so I would
10 not get in trouble with the Court.

11 MR. SPEAS: Thank you, Congressman. I'll ask
12 plaintiff's counsel if we can have a copy of that provided to
13 us, please?

14 THE WITNESS: Certainly, you can.

15 THE COURT: I'm sorry.

16 MR. SPEAS: May I approach the witness? Would you
17 like to view it now?

18 MR. PETERS: Sure. Let me look at it now.

19 THE WITNESS: And Mr. Peters, I have your name up
20 here as well.

21 MR. SPEAS: May I approach?

22 THE COURT: You may.

23 BY MR. PETERS:

24 Q Congressman Butterfield, I want to thank you for letting
25 me look at that because there were a couple of times my hand

1 was not keeping up with me as I tried to take notes, and you've
2 helped me out.

3 You testified, I believe, earlier about the margins
4 of victory in your various races. And I believe I wrote down
5 that in 2004, it was around -- I'm going to round here --
6 63 percent?

7 A Yes.

8 Q And in 2006, you were unopposed?

9 A Yes.

10 Q All right. In 2008, it was over 70 percent; is that
11 correct?

12 A Yes.

13 Q And then in 2010, it was 59?

14 A Yes.

15 Q Then in 2012, over 75 percent?

16 A Yes.

17 Q In 2014, it was just over 73 percent?

18 A Correct, right.

19 Q So of the five elections in which you had an opponent,
20 three of them had a margin of over 70 percent; is that correct?

21 A Three of the five had margins greater than -- yes, greater
22 than 70 percent.

23 Q All right. And one of those was under the 2001 Plan,
24 wasn't it, not under the 2011 Plan?

25 A That is correct -- no, that is not correct. Ask the

1 question again.

2 Q One of those margins of victory that was over 70 percent,
3 the one in 2008, would have been under the 2001 Congressional
4 District --

5 A That's correct.

6 Q -- Congressional Plan; correct?

7 A Yes.

8 Q Okay. Thank you. One other thing I wanted to pick up on,
9 you mentioned -- and you may have answered this, but I want to
10 make sure it's clear.

11 You said you had heard that there might be some
12 discussion about drawing the 1st District into Guilford County?

13 A Yes.

14 Q Do you remember who you heard that from?

15 A I don't. It was a member of the legislature, I would
16 guess a member of the State Senate. So it would have either
17 been Senator Ed Jones or Senator McKissick, probably one of
18 those two, yes.

19 Q And I believe you said you did discuss that with Senator
20 Rucho --

21 A Yes.

22 Q -- when you met? And his -- excuse me. Go ahead.

23 A He dismissed it when I brought it up, yes.

24 Q All right. When you say he dismissed it --

25 A He acknowledged -- he acknowledged that it had been a

1 conversation, but I got the impression that it was not likely
2 to happen.

3 Q Thank you.

4 A Yes.

5 Q Now, you commented that you were careful, based on
6 Ms. Williams' advice, not to state a preference for Wake or
7 Durham County when you were meeting with Senator Rucho and
8 Representative Lewis; did I get that right?

9 A That is correct.

10 Q And why was it you didn't want to state a preference?

11 A Two reasons. One was political. I did not want the
12 voters of the county that I did not choose to feel that they
13 would be unwanted, you know, in a district that I would
14 represent.

15 Secondly, because I know how litigation works. I
16 spent 30 years in a courtroom, and I know how it works. And I
17 know the less you say, the better you are.

18 Q Would I be correct in saying you didn't want to say
19 something you would be unhappy to hear repeated back, say, in
20 court today?

21 A Yes.

22 Q All right. Let me ask you to look at the white notebook
23 that Mr. Speas had you looking at. Behind the tab with your
24 name on it, there's a tab that says 19?

25 A Yes.

1 Q Do you see that?

2 A I do.

3 Q And that's the letter that you wrote to Senator Rucho and
4 Representative Lewis; correct?

5 A It is.

6 Q And it's marked down at the bottom left-hand corner
7 Defendant's Exhibit 19?

8 A Yes.

9 Q All right. Let me ask you a few questions about that.
10 Let me ask you to look at the second paragraph, which -- let me
11 just ask you to read the first sentence of the second
12 paragraph.

13 A Yes, and this is refreshing my memory. I'm glad you
14 directed my attention to this.

15 Quote: "It is regrettable that you would use the
16 Voting Rights Act and my objection to the removal of Gates,
17 Washington, Beaufort, Craven, Jones, and Wayne Counties to
18 justify wholesale changes to the proposed congressional map."

19 Should I continue?

20 Q That's fine. Thank you.

21 A Yes.

22 Q Why were you objecting to the removal of Gates,
23 Washington, Beaufort, Craven, Jones, and Wayne Counties?

24 A I felt it was unnecessary. It was too much of a radical
25 change to the core district that I knew so well.

1 Secondly, these were Section 5 counties that I
2 believe needed the protection of and the ability to elect a
3 member of Congress of their choosing. And I just thought that
4 it was absolutely unnecessary to take these counties out of the
5 mix when there were many other ways that a legal district could
6 have been configured.

7 Q Why did the fact that they were Section 5 counties make
8 you think they should be kept part of District 1?

9 A Because Section 5 counties, by definition, are counties
10 that have histories of voter discrimination and
11 disenfranchisement. And we have been trying to remedy past
12 discrimination in Section 5 counties -- all counties, but
13 particularly all the Section 5 counties for generations. And
14 to see those counties just absolutely removed from a majority
15 minority district and submerged into the adjoining district, I
16 felt, was unneeded, unnecessary, and unfair to the citizens of
17 those counties.

18 Q All right. Were any of those counties or portions of any
19 of those counties put back in District 1 by the time the
20 district was actually enacted?

21 A Yes, all except Jones County.

22 Q All except Jones?

23 A Yes.

24 Q So Gates -- at least a portion of Gates, Washington,
25 Beaufort, Craven, and Wayne were put back in your district?

1 A Well, we call the Gates County area the Albemarle region.
2 The counties in the Albemarle region are Gates, Chowan,
3 Perquimans, and Pasquotank. And, traditionally, I have always
4 represented those four counties. My two predecessors have
5 likewise represented those four.

6 And so, even though these four were in the final map,
7 only the black communities of these four counties were in the
8 final map. The white communities were -- and the more
9 Republican-leaning communities were excluded from the final
10 map. And that was very confusing to me why the map drawers
11 would actually go into the Albemarle region and just cherry-pick
12 African-American communities and leave those in my district,
13 and to allow the remaining communities to go into the 3rd
14 Congressional District. It was very hard to comprehend.

15 In fact, I even drew a map of it just for my own
16 edification over the weekend. And as I look at it today, it
17 just makes no sense to me at all. I look at Beaufort County,
18 for example. I have represented six precincts -- six voting
19 precincts in Beaufort County, which is the town of Washington,
20 Your Honors, as the county seat. And now I've been reduced
21 from six precincts to three precincts, and those are the
22 African-American precincts in the town of Washington. And it's
23 obvious to me that this is partisan, racially motivated
24 gerrymandering, and it's offensive. It's offensive to me.
25 It's offensive to the people that I represent.

1 Q Thank you. But I believe my question was, am I correct
2 that the enacted version of Congressional District 1 does
3 include a portion of Gates, Washington, Beaufort, Craven, and
4 Wayne Counties?

5 A You didn't use "portion" in your first question.

6 Q If I didn't, that was my mistake.

7 A You did not. That's why I went through all the lengthy
8 explanation. But yes, that is true.

9 Q Thank you.

10 A Yes.

11 Q And the first iteration of the Congressional Plan and the
12 final iteration of the Congressional Plan that was enacted does
13 include portions of Chowan, Perquimans, Pasquotank?

14 A Portions. And I will again repeat those portions are
15 predominantly -- overwhelmingly African-American communities.

16 Q In your letter of July 22nd, you did not say anything
17 about Chowan, Perquimans, or Pasquotank; did you?

18 A I did not, no.

19 Q Thank you. And, now, in the first iteration of the
20 Congressional District, it's correct, isn't it, that your --
21 the 1st Congressional District was drawn into Wake County?

22 A Wake County? Yes, sir.

23 Q Yes, sir.

24 A That is correct.

25 Q And I believe you said you were looking at the map, trying

1 to figure out where St. Augustine's and Shaw would be in that?

2 A Yes.

3 Q But the version that was enacted went into Durham County
4 rather than Wake County; is that right?

5 A That is correct.

6 Q All right. And the original version of the 1st District
7 enacted in 1991 also went into Durham County, didn't it, or do
8 you recall?

9 A You're taking me back a long ways. I don't think so. I
10 think District 12 went into Durham County, and District 1 went
11 into New Hanover County.

12 Q Let me see if this helps a little bit, Congressman. You
13 should have a black notebook up there that on the front says,
14 "Historical Congressional Maps 1991 to 2011."

15 A Yes.

16 Q And there's an exhibit sticker down at the bottom,
17 Defendant's Exhibit 126. And let me ask you to look at
18 district -- at Tab 1, which is taken from the submission for
19 the 1991 Congressional Plan. If you look at the third page of
20 that, you can see a closeup of District 1.

21 A I do now recall, Counselor. I do now recall. It did go
22 into Durham.

23 Q Thank you.

24 A Because Ken Spaulding and Mickey Michaux ran for Congress,
25 I believe.

1 Q Thank you. Now, looking back at your letter --

2 A No, I stand corrected on that. Michaux and Spaulding ran
3 pre-'91. So please continue your line. I'm trying to refresh
4 my memory. Yes.

5 Q That's fine. I realize it was sometime ago.

6 A Yes.

7 Q Looking back at your letter, in that second paragraph, the
8 last sentence reads:

9 Additionally, the amended plan -- let me, before I
10 start. Do you have that letter back in front of you?

11 A Yes.

12 Q The last sentence reads:

13 Additionally, the amended plan unnecessarily, quote,
14 "packs," closed quote, new African-American voters from
15 counties not covered by Section 5 of the Voting Rights Act into
16 District 1.

17 Did I read that correctly?

18 A No. Are we still on the July 22nd letter?

19 Q Yes, sir, the second paragraph, the last sentence of the
20 second paragraph.

21 A The last sentence of the second paragraph.

22 Q I'm sorry.

23 A All right. Additionally -- I'm with you, yes.

24 Q In that sentence, what do you mean by the word "packs"?

25 A To pack a community, to me, means to encompass a voting

1 bloc of people and to unnecessarily attach those people to
2 another community to achieve a goal that is not mandated by law
3 or necessary.

4 Q So in your understanding, does the term "pack" have
5 anything to do with how many people are included in the
6 district, whether it's a supermajority or a bare majority?

7 A There are degrees of packing, certainly. But any time you
8 have a district that's already 47 percent African-American, and
9 continuously, for more than a decade, has elected a candidate
10 who is the choice of the African-American community, to then
11 scoop up additional communities of African-American voters, and
12 to add those voters to the existing majority minority district,
13 is -- meets the definition, in my view, of "packing." It's
14 putting too many into a community in order to achieve a result.

15 Q All right. Looking a little further down in this letter,
16 and this has been mentioned earlier today, it's correct, isn't
17 it, that as of the 2010 Census, the 1st Congressional District
18 was underpopulated by over 97,000 people?

19 A That is accurate.

20 Q Do you have a sense, based on your knowledge of Eastern
21 North Carolina, how that came to be why the 1st Congressional
22 District came to be so underpopulated compared to, say, the
23 12th that I believe Congressman Watt testified earlier was
24 overpopulated by just a couple thousand?

25 A I think I know. North Carolina has been allocated 13

1 representatives based on the census, and that went unchanged
2 after the 2010 Census. But in the meantime, the population of
3 our state increased to 9 million people, which was about 1-1/2
4 million people more than the prior decade. And so, by
5 definition, the districts had to increase in ideal size.

6 And, at the same time, concurrent with that was a
7 loss of population in rural communities. And so the growth of
8 the state coupled with the loss of population in rural
9 communities resulted in a 97,500-person deficit. And I
10 recognized that clearly when we had these conversations. I
11 knew we had to find 90-plus-thousand people.

12 Q Right. Now, going back to the margins of error that you
13 mentioned -- excuse me -- the margins of victory that you
14 mentioned in your elections, in 2008, when you had a margin of
15 receiving 70.28 percent of the vote, I think is what I have
16 written down, and would I be correct that that means your
17 opponent received 29 point --

18 A Seventy-two.

19 Q -- 72 percent of the votes?

20 A Yes, sir.

21 Q Right. Do you know what that translates into in numbers?

22 A Oh, I would have to use pencil and paper to figure that
23 out. Probably between 250 and 300,000 votes, I suppose.
24 There's 730,000 people in the district. Probably 300,000 are
25 registered voters -- 300-plus-thousand are registered voters.

1 And so 10 percent would be -- it probably says that my opponent
2 probably received 80 or 90,000 votes.

3 Q Compared to your --

4 A Well in excess of 100,000.

5 Q Okay. Do you know if that margin was more or less -- the
6 97,500 more or less than the amount by which the district had
7 become underpopulated? And if you don't know that --

8 A I'm doing the math. I'm doing the math, yes. I don't
9 know.

10 Q All right. Thank you.

11 A I don't want to guess at it. I don't know.

12 Q All right. Thank you.

13 A Yeah.

14 Q I believe you testified earlier that the African-American
15 population of the district as it existed in the 2000s, so in
16 other words, the 2001 Congressional District after the 2000
17 Census, I believe you testified that was around 47 percent?

18 A My records show 47.66.

19 Q Do you recall whether that is total black population,
20 voting-age population, or --

21 A Eighteen and over voting-age population.

22 Q Do you recall whether it is total black or single-race
23 black, people who -- do you -- I'll put it a different way.

24 Do you recall whether that is limited only to the
25 people who identified themselves on the census as being black,

1 or does it also include the people who identified themselves as
2 being part black?

3 A I know what you're asking, and I don't know. I've seen
4 these cross-tabs on the census data, and I don't know if BVAP
5 also includes these multiple categories. I don't know.

6 Q All right. And that was -- that 47 percent was under the
7 2000 Census; is that correct?

8 A Correct.

9 Q Would you agree that the census is a snapshot of what a
10 population looks like as of the time it's taken?

11 A Yes, they do. The American Community Surveys, you know,
12 during the midterm --

13 Q Right.

14 A -- and for that very reason.

15 Q All right.

16 A Yes.

17 Q Let me ask you to pull out the black notebook again, which
18 is Defendant's Exhibit 126. And let me ask you to look at Tab
19 5.

20 A All right, sir.

21 Q And do you see that that says, Congress Zero Deviation?

22 A Yes, sir.

23 Q Do you recall whether or not that was the name of the 2001
24 Congressional Plan?

25 A Yes, it is.

1 Q All right. And that's marked as Defendant's Exhibit 4.4A
2 up in the upper right corner of that map?

3 A Yes.

4 Q Let me ask you to turn a few pages back to the page that
5 at the top says, voting-age population by race?

6 A You said "back." Do you mean forward or back?

7 Q It would be behind that map, and it's going to be one,
8 two, three, four pages behind that map.

9 A The map that I'm looking at is the first document under
10 Tab 5.

11 Q Correct.

12 A So it would be after the map?

13 Q After that map, yes, sir.

14 A After the map, I see Exhibit 4, which is the fourth
15 affidavit of Dan Frey.

16 Q Right. Then go three more pages behind that.

17 A Yes, sir.

18 Q And you should see one that says, district attributes,
19 Congress Zero Deviation, voting-age pop by race.

20 A I have it.

21 Q All right. And do you see where District 1 is noted in
22 the left-hand margin?

23 A Yes.

24 Q And if you go over three columns, do you see the one that
25 says, VA: black?

1 A Yes.

2 Q And what does it note for the percentage for District 1 in
3 that column? And I realize some of these numbers are small.

4 A They are, and the copies are not as clear as they probably
5 could be. It appears -- I'm going to go across with you. I'm
6 seeing District 1, total is 457,936. VA white is 223,452.
7 Black is 218,732. Native would be 3,273. And then I guess
8 Asian/Pacific Islanders would be the next, 2370. I don't see a
9 percentage.

10 Q If you look at the line under that, you see that number
11 translated into a percent?

12 A I do. 47.76 percent.

13 Q Is that the 47 percent number you've been talking about?

14 A Absolutely.

15 Q Now, if you look over in the last column, do you see VA:
16 multi-race?

17 A Yes.

18 Q And what's the number and the percentage there?

19 A .71 percent, less than 1 percent.

20 Q All right. Now, let me ask you to look at Tab 6, which is
21 Defendant's Exhibit 4.5A. And I'll represent to you this is
22 the same map but with data based on the 2010 Census. And I'm
23 afraid these numbers are going to get even smaller.

24 If you look one page behind that map, you'll see it
25 says, Exhibit 5, fourth affidavit of Dan Frey, Congress Zero

1 Deviation 2010 Census. And that's Defendant's Exhibit 4.5?

2 A Yes.

3 Q All right. Now, let me ask you to go to two sheets behind
4 that, and you'll have to turn the page sideways. And do you
5 see a page that says, stat pack report of total population by
6 race and ethnicity, Congress Zero Deviation?

7 A Yes.

8 Q And do you see the column and line for District 1?

9 A Yes.

10 Q All right. Now, let me ask you to follow that line over
11 to the column that says, percent black. And can you tell me
12 what that number is?

13 A 49.65 percent.

14 Q All right. Now, let me ask you to keep going.

15 THE COURT: Hold on just a second. I'm not sure
16 we're on the right page. Down at the bottom of the page on the
17 CM/ECF filings --

18 MR. PETERS: Yes, sir.

19 THE COURT: -- 28 of 45, what page are you on?

20 MR. PETERS: It says 27 of 45.

21 THE COURT: You said that was 49.65? Okay. And you
22 may continue.

23 BY MR. PETERS:

24 Q Now, let me ask you to keep going over to -- do you see a
25 column that says, (MR) black?

1 A Yes, sir.

2 Q All right. And what is that percentage?

3 A 1.00 percent.

4 Q All right. And if you go over two more columns, do you
5 see a column that says, total percent black?

6 A Yes, sir, 50.65 percent.

7 Q All right. Now, let me ask you to look at the next page.
8 And this would be the one I think Judge Osteen was on a minute
9 ago, 28 out of 45. And we'll look at the same things.

10 Do you see in the line for District 1 a column that
11 says, percent black?

12 A Yes, sir.

13 Q And what does it say?

14 A 48.07 percent.

15 Q All right. Do you see a column a ways down that says,
16 percent multi-race black?

17 A Yes, sir, 1.04 percent. Yes, that is correct. "MR" means
18 multi-race, yes.

19 Q All right. Keep going two more columns, and you'll see
20 one that says --

21 A Multi-race black, yes.

22 Q Right. And what is that number?

23 A It appears to be .56 percent, less than 1 percent.

24 Q And then two more columns, do you see, total percent
25 black?

1 A Yes, sir.

2 Q And can you read that?

3 A 48.83 percent.

4 Q So, at least based on this -- these numbers from the 2010
5 Census, the voting-age population of District 1 had actually
6 gone up -- the black proportion of the voting-age population in
7 District 1 had gone up since 2000; had it not?

8 A That's what this document reveals, and it seems reasonable
9 that that would be correct.

10 Q Now, let me ask you to look at the next page where it
11 says, Stat Pack Report of Voter Registration by Party and Race,
12 Congress Zero Deviation. Do you see that?

13 A Yes.

14 Q And I'm going to just ask you to look for the line for
15 District 1, and then look all the way over in the last block of
16 columns where it says, Registration by Race Without Regard to
17 Party.

18 A Yes, sir.

19 Q And do you see the percent black figure given there?

20 A It's a smudgy copy, but I'm going to say that it appears
21 to be 50 -- 50.66 percent.

22 Q That's what it appears to be to me as well. I agree it's
23 not an ideal copy. But -- so based on these numbers, according
24 to this data, the majority of the registered voters in District
25 1 as of the 2000 Census were African-American -- identified as

1 African-American; is that correct?

2 A Yes, as of 2011.

3 Q Now, let me ask you, are you familiar with how the census
4 counts Hispanics in -- when it does its counting?

5 A I know the US Census Bureau makes a very deliberate effort
6 to try to accurately take the count, and I know there are
7 various methodologies that are used. I know there's a lot of
8 advertising in Hispanic communities to encourage an accurate
9 count, and I know the census enumerators literally go into the
10 communities, knock on the doors, and do everything within their
11 power to get an accurate number.

12 Q What I was -- I didn't -- I don't think I phrased that
13 particularly well.

14 Are you aware whether, in the census, a distinction
15 is drawn between race and ethnicity?

16 A Yes.

17 Q And what is that distinction as you understand it?

18 A I'm not sure I fully understand it because it has evolved
19 over the years. But ethnicity would be a description of the
20 individual's heritage or lineage and how the person
21 self-identifies. And so, if a person identifies as black,
22 obviously, the ethnicity would be African-American. If they
23 identify as mixed race or a -- I forgot the categories, but
24 there are two or three different categories. But I think all
25 of these are lumped into one category of ethnicity being

1 African-American.

2 Q All right. Do you -- well, let me try it this way. If
3 you still have the notebook in front of you, the one with the
4 plans in it. And we were on the page that at the bottom says
5 page 29 of 45.

6 A Yes.

7 Q And the next page would be page 30 of 45.

8 A Yes.

9 Q And at the top, it says, Stat Pack Report of Voter
10 Registration by Gender, Age, and Ethnicity. Do you see that?

11 A Yes.

12 Q And if you look at the last column there, do you see it
13 makes a distinction, simply, Voter Registration By Ethnicity;
14 it makes a distinction between Hispanic and non-Hispanic?

15 A Yes.

16 Q Let me ask you to turn back forward to the page that at
17 the bottom is marked page 27 of 45.

18 A I'm there.

19 Q All right. Look at the very last column there -- well,
20 the last two columns. And do you see columns that say, white,
21 non-Hispanic, and percent white non-Hispanic?

22 A Yes.

23 Q In that last column, percent white non-Hispanic, what's
24 the number there?

25 A 270,686.

1 Q And what's the percentage?

2 A 42.58 or either 56.

3 Q All right. And if you look back at the beginning, the
4 early columns in that, where you see white and percent white?

5 A Yes.

6 Q The total percentage of white there is shown as
7 44.19 percent; isn't it?

8 A That is correct.

9 Q But of those, according to this chart at least,
10 42.58 percent are non-Hispanic whites.

11 A That is correct. I suppose because some Hispanics
12 identify as white and some don't.

13 Q Right.

14 A Yes.

15 Q And by the same token, some blacks could identify as
16 Hispanic, and some others might not; is that correct?

17 A There may be incidence of that, but probably less
18 prevalent as opposed to the other way.

19 Q And again, on page 28, the one that says 28 of 45, which
20 is the next page. If you look in the column that says, percent
21 white, for District 1, it says 46.92 percent; is that correct?
22 The column that just says, percent white.

23 A Percent white is 46.92 percent.

24 Q Right.

25 A Yeah.

1 Q And if you look at the very last column, the percent white
2 non-Hispanic is 45.59 --

3 A That is correct.

4 Q -- is that correct? Excuse me one second, Your Honor.

5 Congressman, let me ask you to look at that page
6 again, the one that's 28 of 45. And I just want to make sure
7 this is clear for the record. Up at the top of that page, does
8 it say it's voting-age population by race and ethnicity?

9 A Yes. The header says, report -- Pack Report of Voting-Age
10 Population By Race and Ethnicity.

11 Q And the page ahead of it, the one that at the bottom says
12 27 of 45, that one is headed, Stat Pack Report of Total
13 Population By Race and Ethnicity.

14 A Yes. Page 27 of 45 is delineated as total population, and
15 28 is delineated as voting-age population.

16 Q Now, Congressman Butterfield, Mr. Speas asked you some
17 questions about voting in Northeastern North Carolina, and I
18 think you kind of shorthanded it as east of I-95, what the
19 voting patterns would be, and comparing it to what Senator Blue
20 had testified to this morning.

21 Is it your testimony that racially polarized voting
22 still exists in many places east of I-95?

23 A It does. When I did voting rights litigation, it was
24 extremely severe, and there were numerous studies conducted
25 that were accepted by the Court that concluded that with the

1 racially polarized voting as it existed then, with multi-member
2 districts for the state legislature, that it was nearly
3 impossible -- I think the Court may have said 1 out of 100,000,
4 that was the *Gingles* Court, Judge Phillips presiding, 1 out of
5 100,000 chances of being elected.

6 And so, as recently as 30 years ago, voting was so
7 polarized that it was nearly impossible for the preferred
8 candidate to get elected. That has improved over the years.
9 But I still believe that two out of three white voters in
10 Eastern North Carolina, particularly in Northeastern North
11 Carolina, which I feel that I'm expert enough to testify
12 regarding because I've been there all of my life, have been
13 into every town, village and hamlet and crossroads in
14 Northeastern North Carolina, know thousands of people. I
15 firmly believe that the preferred candidate of the
16 African-American community probably can expect to get one out
17 of -- if qualified, and we all have different definitions of
18 "qualification," but I think we can probably agree on what
19 "qualification" means, that a qualified -- a qualified
20 candidate who is the preferred candidate of the
21 African-American community, for planning purposes or for
22 strategic purposes, can count on getting one out of three white
23 votes in Northeastern North Carolina.

24 And that means that two out of three will probably
25 not vote for that candidate. There have been exceptions, I'm

1 proud to report.

2 Q So just so I'm clear, though, it is your belief that
3 racially polarized voting still exists --

4 A It still exists without question.

5 Q -- in Northeastern North Carolina? I'm sorry?

6 A It still does exist without question.

7 Q All right. Did you believe it was necessary, in drawing
8 the 1st District, to maintain an African-American population
9 sufficiently high to ensure that African-Americans could elect
10 their candidate of choice?

11 A I think it was important that the legislature look at
12 voting behavior and past electoral success and failures to
13 determine what is the appropriate level of minority -- of
14 African-American voter registration and voting-age population
15 in order to level the playing field to give the preferred
16 candidate an equal opportunity to get elected. And I don't
17 believe that an unofficial number, such as greater than
18 50 percent, is suitable because it should be area specific,
19 maybe not county specific, but certainly regional -- region
20 specific, because what -- the coalition politics of Mecklenburg
21 and Wake County unfortunately don't exist in Northeastern North
22 Carolina.

23 And so, the preferred candidate, usually the
24 African-American candidate, must go out and walk the delicate
25 balance between the interests of the white community and the

1 interests of the African-American community, and that's very
2 difficult.

3 Q And I believe your testimony has been that you believed
4 that the 47.76 percent African -- white voting-age population
5 accomplished what you're describing?

6 A Without question. Not just for me personally, and I
7 continue to tell anyone who's willing to listen this -- listen
8 to this. It's not about my electability, because I am unique,
9 if I must say that about myself, because I've been out there in
10 the trenches for 45 years, served as a judge in most of the
11 counties that I now represent in Congress. And so, I have some
12 political advantages that other candidates probably will not
13 have in the future.

14 And so, while I'm concerned about my own electoral
15 success, I'm also concerned about the success of those who
16 follow me. And I believe that 47 percent is a suitable number
17 that in a qualified candidate who is the choice of the
18 African-American community can be competitive in the 1st
19 Congressional District.

20 Q Do you believe a suitably qualified African-American
21 candidate in the 1st District who is the candidate of choice of
22 African-American voters could be elected if the black
23 voting-age population was reduced from 47.76 percent?

24 A Conceivably, yes.

25 Q How far do you think it could be reduced?

1 A I wouldn't take it below 45.

2 Q So you think if it went under 45, then that would call --

3 A I think the playing field is level at 47. I think at 46,
4 it gets to be a little bit more difficult; 45, it gets more
5 difficult, but still competitive. And I think the law should
6 just guarantee the ability to compete fairly, and so, I feel
7 most comfortable with 47.

8 Q All right. And do you have an understanding of whether
9 the 1st Congressional District -- well, let me approach it this
10 way.

11 Let me ask you to look one more time at the white
12 notebook, Tab 19 behind your name, the third paragraph that
13 begins at the bottom of page 1 with the words, "from the
14 beginning..."

15 A Yes, sir.

16 Q Could you read that first sentence, please.

17 A Okay. Quote: "From the beginning, I simply ask that you
18 start with my current district and add 97,500 people to comply
19 with one person, one vote requirements in a manner that would
20 comply with the Voting Rights Act."

21 Q And when you say "in a manner that would comply with the
22 Voting Rights Act," which parts of the Voting Rights Act were
23 you -- did you have in mind?

24 A Section 2, principally, that is, that the minority -- that
25 the African-American vote not be diluted to such an extent that

1 the vote -- the voters would be unable to influence the outcome
2 of an election.

3 Q And it's true, isn't it, that District 1 was initially
4 drawn to comply with Section 2 of the Voting Rights Act?

5 A It was. I remember it very well.

6 Q Despite the fact that it also happens to include many
7 counties that were at the time covered by Section 5?

8 A A substantial number of District 1 counties are Section 5
9 counties, and there are historical reasons for that.
10 Northeastern North Carolina was the venue for most of the slave
11 plantations in North Carolina during the period of slavery.
12 And when slavery ended 150 years ago, many African-Americans
13 continue to live on the soil.

14 And they, through the years, have begun to have
15 families and to multiply, and the population -- the population
16 of African-American communities continues to be high as
17 compared to the white communities. In Ward County, for
18 example, majority-black. Halifax County, majority
19 African-American. Northampton County, Hertford County, Bertie
20 County, all of these counties are majority African-American and
21 there are historical reasons for it.

22 Q And when you said here, "comply with the Voting Rights
23 Act," you specifically had in mind Section 2?

24 A Yes.

25 MR. PETERS: All right. I have no further questions.

1 Thank you very much.

2 THE COURT: Redirect?

3 MR. SPEAS: Just a couple of clarifying questions.

4 Thank you, Congressman Butterfield.

5 REDIRECT EXAMINATION

6 BY MR. SPEAS:

7 Q You were asked a series of questions about the 2001 Plan
8 measured both by Census 2000 data and then by Census 2010 data;
9 correct?

10 A Yes.

11 Q When a legislature enacts -- when the legislature enacted
12 the 2001 Plan, it only had the 2000 Census data; correct?

13 A That would seem to be logical. It was the following year,
14 yes.

15 Q And it did not have any 2010 Census data to submit to the
16 Department of Justice for Section 5 preclearance purposes?

17 A That is correct.

18 Q And only by peering into some crystal ball could the
19 General Assembly in 2001 guess what the numbers would be in
20 2010?

21 A That would be correct.

22 Q Okay. Now, one final question. All the years you've
23 spent in voting rights litigation, it is your understanding
24 that each district must be narrowly tailored to meet the
25 requirements of Section 2?

1 A One size fits all does not work in North Carolina, and I
2 don't believe would work in any southern state whatsoever. In
3 order to draw a fair map that meets the requirements of the
4 Constitution and the State Constitution, I believe that you
5 have to perhaps maybe not look at county-specific data, but at
6 least regional data.

7 Look at the north -- look at -- because even the
8 voting behavior between Durham and the other part of the
9 district is different. There's a lot of coalition building in
10 Durham. That was alluded to earlier. Polarization is -- I'm
11 not going to say nonexistent in Durham, but it's not as -- at
12 the level that it is in Halifax County. And so I believe that
13 any responsible map drawer should look at regional data in
14 order to determine the severity of the polarization in voting
15 and to narrowly tailor that map to meet that data.

16 Q Would it be accurate, Congressman Butterfield, that
17 Congress -- that Congressional District 1, as now configured,
18 includes a county, Durham County, where racially polarized
19 voting is probably among the least in the state; and at the
20 same time, Bertie County, for example, where racial polarized
21 voting may be higher?

22 A That's a good example, Mr. Speas. Durham County, which is
23 the county I spent many years of my formative life in as a
24 college student and as a law student, black leaders in Durham
25 fought some real tough battles over the years. And it grew out

1 of that a sense of working together in the political arena.

2 And even though there continue to be differences in
3 Durham between the racial groups, there is cohesion on many of
4 the political issues. And we don't have, in Bertie County of
5 Eastern North Carolina, that degree of cooperation.
6 African-Americans and whites like each other and get along, but
7 when it comes to the voting booth, their behavior is in stark
8 contrast.

9 Q To Durham?

10 A Sir?

11 Q To Durham County?

12 A In stark contrast to Durham County, yes.

13 MR. SPEAS: Thank you very much, Congressman.

14 THE WITNESS: Yes.

15 MR. PETERS: Your Honor, just one or two questions.

16 RECROSS-EXAMINATION

17 BY MR. PETERS:

18 Q Congressman Butterfield, Mr. Speas asked you about the
19 census data -- the 2000 Census data when the 2001 Plan was
20 adopted, and the General Assembly not having a crystal ball to
21 see what things were going to look like come the 2010 Census.
22 But would you agree that the 2000 -- applying the 2010 Census
23 to the 2001 District is useful in seeing what the population of
24 the district actually looked like by the end of the decade?

25 A It's good for an analysis. It's probative of reaching

1 what a fair district should look like. I would agree with
2 that, that the 2010 data when compared to the 2001 data is
3 probative in reaching a result, yes.

4 Q Do you know which census data the United States Justice
5 Department would have used in evaluating the benchmark for
6 Section 5 submission?

7 A I don't know.

8 MR. PETERS: I have nothing further, Your Honor.
9 Thank you.

10 MR. SPEAS: No questions, Your Honor.

11 THE COURT: You may step down.

12 (At 4:07 p.m., witness excused.)

13 MR. SPEAS: Thank you. May Congressman Butterfield
14 be excused?

15 THE WITNESS: Should I leave these exhibits?

16 THE COURT: Any objection to Congressman Butterfield
17 being excused?

18 MR. PETERS: Oh, no, Your Honor. We appreciate
19 Congressman Butterfield him being here and wish him safe
20 travels.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. SPEAS: Your Honor, we would call our first
24 expert witness, Dr. David Peterson. Dr. Peterson, if you would
25 come around, please, and be sworn.

1 (Witness sworn by the clerk.)

2 MR. SPEAS: Your Honor, if I may, I have a collection
3 of witness notebooks.

4 THE COURT: All right.

5 MR. SPEAS: If I may, this notebook contains
6 documents that Dr. Peterson will be talking about. I hope I
7 have them in better order this time, Your Honor. There's three
8 of those for the judges and one for Mr. Farr, and the remainder
9 for the clerks. Oh, you need one. May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 DAVID PETERSON,

13 PLAINTIFF'S WITNESS SWORN AT 4:09 p.m.

14 DIRECT EXAMINATION

15 BY MR. SPEAS:

16 Q Dr. Peterson, would you state your name for the record,
17 please.

18 A Yes, my name is David West Peterson, P-E-T-E-R-S-O-N.

19 Q And would you review for the Court your educational
20 background?

21 A Yes. I have a bachelor's degree from the University of
22 Wisconsin, and master's and Ph.D. degrees from Stanford
23 University, all in electrical engineering.

24 Q And would you describe for the Court your work experiences
25 after receiving your Ph.D?

1 A Yes. After I got my Ph.D, I went into the Army for a
2 couple of years where I served at the Institute for Exploratory
3 Research at Fort Monmouth, New Jersey, doing basic research.
4 And then I took a faculty position at Northwestern University,
5 where I taught in the School of Management subjects,
6 statistics, operations, research, generally-applied
7 mathematics, computer applications, that sort of thing.

8 And then I took a professorship at Duke University,
9 where -- in the School of Business there. And I continue to
10 teach operations research, statistics, applied mathematics,
11 computer applications, and that sort of thing. And after I had
12 been there half dozen years or so, I got involved with
13 attorneys doing consulting work and helping with statistical
14 aspects of their cases, which led to the formation of a small
15 consulting firm. We did consulting and software development.

16 The firm was called PRI Associates. And in working
17 with them, I worked, I suppose, with 1,000 or so different
18 legal teams on various statistical issues, such as employment
19 discrimination, political redistricting, jury selection,
20 high-tech intellectual property disputes, and so forth.

21 Q Are you the author of any scholarly articles in
22 professional and academic journals?

23 A I'm coauthor of a book called *Use of Statistics in EEO*
24 *Litigation*. I'm sole author of another book on the use of
25 statistics and litigation, and I'm the author of several dozen

1 articles that have appeared in professional journals, refereed
2 professional journals.

3 Q And are your books about statistics and litigation now
4 in -- they've been out in a number of versions; is that
5 correct?

6 A Yes. My first book on the subject came out in -- I think
7 it was 1978, or thereabouts, and it's now in something like its
8 30th edition.

9 Q Okay. And have you qualified -- been qualified and
10 testified as an expert in any lawsuits?

11 A I have, in both state and federal courts.

12 Q And do you have an estimate of the number?

13 A Hard to say, but certainly at least 50 cases, and most
14 likely more.

15 Q And were you qualified and testified as an expert in the
16 *Cromartie* litigation concerning Congressional District 1 that
17 was litigated back in the 1990s?

18 A Yes.

19 Q Dr. Peterson, if you would turn to Tab 1 in the notebook
20 in front of you. Let me ask you if, at the -- toward the end
21 of Tab 1, there appears Appendix A, which is a longer version
22 of your qualifications and experience than you just described?

23 A Yes.

24 Q And is that accurate?

25 A It is, even though it bears a date from a couple of years

1 ago, it's essentially up to date. I haven't done much in the
2 last couple of years. I've been mostly retired.

3 Q Tree farming, I believe?

4 A Tree farming, yes.

5 MR. SPEAS: Your Honors, I would tender Dr. Peterson
6 to the Court as an expert in the field of applied mathematics.

7 MR. STRACH: No objection, Your Honor.

8 THE COURT: All right. Dr. Peterson then may testify
9 as an expert in the field of applied mathematics.

10 BY MR. SPEAS:

11 Q Dr. Peterson, would you describe for the Court the
12 analysis that you undertook for the plaintiffs in this case?

13 A Yes. I examined the 1st Congressional District and the
14 12th Congressional District, as presently constituted, and
15 addressed the issue of whether the borders of each appear to
16 have been constructed more for the purpose of collecting
17 Democrats within, or more for the purpose of collecting blacks
18 within.

19 Q And what conclusion did you reach with respect to those
20 two districts?

21 A Well, I did something that I call a segment analysis. And
22 what the segment analysis shows is that race better accords
23 with each of the two boundaries than does political party
24 preference.

25 Q In other words, race more than politics accounts for the

1 boundaries of Congressional 1 and 12?

2 A Yes, that's correct.

3 MR. SPEAS: My colleague, Mr. Hamilton, has informed
4 me that the document that Dr. Peterson is speaking from is
5 Plaintiff's Exhibit 15. I apologize for that. Thank you,
6 Mr. Hamilton.

7 BY MR. SPEAS:

8 Q Would you, Dr. Peterson, talk to the Court a little bit
9 about the concept of a segment analysis? What are you doing?

10 A Sure. A segment analysis arises from the following line
11 of thought: Let's suppose someone hands us a map with a
12 hand-drawn line on it along with a question of is there some
13 objective way that you could determine why that line was drawn
14 the way that it was? And if the line was drawn, let's say, as
15 an attempt at a contour line, we would expect that if we walk
16 along the path on the ground traced out by that line, that we
17 could reasonably expect to see that, most of the time at least.
18 The land is higher on the one side of the path than it is on
19 the other side of the path. And if we observe that that's the
20 case, that gives us some confidence that maybe the purpose
21 behind that line was that it was an attempt at drawing a
22 contour line.

23 Alternatively, if, as we walk along the path traced
24 out by that line, we see that, oh, say, the property on one
25 side of the line is under different ownership than property on

1 the other side of the line, that would give us some confidence
2 that perhaps the line was drawn as a boundary line depicting
3 ownership or separating ownership of the land.

4 The question that was posed to me, basically, was
5 here's the boundary of a political district. What can you say
6 about why it was placed just where it was? And, in particular,
7 can you say anything about whether it seems to have, built the
8 way it was -- have been built the way that it was for the
9 purposes of collecting blacks within; or does it seem -- is the
10 evidence stronger that it was built, perhaps, with the purpose
11 of collecting Democrats within? So that's the question that a
12 segment analysis attempts to address.

13 I'm going to walk along the boundary, at least in
14 concept, and basically look, first, at the issue of whether the
15 line seems to have been drawn for the purpose of collecting
16 Democrats inside. And if that's the case, what we should
17 expect to see as we walk along the line is that the
18 representation of Democrats on the inside of the path is
19 greater than the representation of Democrats on the outside.

20 On the other hand, if the line was drawn for the
21 purpose of collecting blacks within, we would expect to see as
22 we walk along that the representation of blacks on the inside
23 is greater than the representation of blacks on the outside.
24 And what a segment analysis does is, basically, go around the
25 boundary of each of the two districts and -- twice; once

1 looking at the representation of blacks inside and out, and
2 once looking at the representation of Democrats inside and out.

3 Q And Dr. Peterson, behind Tab 1, does there appear your
4 second affidavit marked Plaintiff's Exhibit 15; and I would ask
5 you whether or not that is the -- sets forth your results of
6 your segment analysis for Congressional District 12? Tab 1,
7 second affidavit.

8 A Yes, that is a description of my analysis -- my segment
9 analysis of the 12th District.

10 Q Would you, Dr. Peterson, walk the Court through that --

11 A Sure.

12 Q -- and explain it to them.

13 A Sure. A segment analysis, under the present
14 circumstances, is rather limited by the availability of data.
15 What we have at hand is precinct-by-precinct data on the
16 representation of Democrats among the population, and we have
17 precinct-by-precinct data on the representation of blacks
18 within the population. And as it happens, the boundary of the
19 12th District -- let me talk first about the 12th District --
20 pretty much follows precinct lines, so that as one walks along
21 the border of the 12th District, there is an inside precinct
22 and then an immediately adjacent outside precinct.

23 And as we progress along the boundary a little ways,
24 eventually, one of the precincts changes, either the inside
25 precinct changes or the outside precinct changes, and we enter

1 upon a new segment of the district boundary, the voting
2 district boundary.

3 And it happens, going precinct by precinct, the
4 boundary of the 12th District breaks into a total of 330
5 segments, each segment characterized by an inside precinct and
6 an outside precinct. And for each precinct, we can measure the
7 representation of blacks in that precinct, inside and outside,
8 and compare the two and determine which is greater.

9 And we can also compare the representation of
10 Democrats on the inside precinct and the outside precinct,
11 compare the two, and determine on which side of the path the
12 representation is greater.

13 The segments on which the -- for which the
14 representation of blacks on the inside is greater than on the
15 outside, I call Type B -- B for black -- segments. And the
16 segments for which the representation of Democrats on the
17 inside is greater, I call Type D segments, Democrat segments.

18 And as it happens, not too surprisingly, most of the
19 segments, most of the 330 segments are Type B segments, and
20 most are also Type D segments. And, in fact, most segments are
21 both Type B and Type D.

22 But the question here is, really, can one determine
23 whether there is more support, whether there's more evidence
24 that the boundary was placed for the purpose of collecting
25 blacks within or for the purpose of collecting Democrats

1 within. And to examine that issue, we have to look at the
2 segments which are not both Type B and Type D.

3 For example, if we have a segment that's Type B, but
4 not Type D, that is, blacks are represented inside to a greater
5 extent than they are represented outside, but Democrats are
6 represented outside to a greater extent than they are
7 represented inside, such a segment is consistent with the
8 hypothesis that race, to an extent, greater than political
9 considerations accounts for the placement of that segment or
10 that portion of the boundary of the 12th District. A segment
11 like that supports what I call the race hypothesis, that race
12 was more important than political affiliation in accounting for
13 the placement of that particular segment of the 12th District.

14 On the other hand, a segment might be such that the
15 representation of Democrats on the inside is greater than the
16 representation on the outside, but the representation of blacks
17 on the outside is greater than on the inside. And such a
18 segment I call a Type P segment because it supports the party
19 hypothesis more than it supports the race hypothesis.

20 And what I do, then, in a segment analysis is go
21 around and count up the number of Type B segments -- the number
22 of Type R segments, sorry, the ones that support the race
23 hypothesis, and the number of Type B segments, the ones that
24 support the party hypothesis over the race hypothesis. And the
25 results of those counts are shown in Table 1.

1 Q I'll put Table 1 up on the screen.

2 MR. SPEAS: And Table 1, Your Honors, is on page 6 of
3 Exhibit 26 -- Exhibit 15 under Tab 1. Table 1, Tables of
4 District 12 Segments By Race and Party Type.

5 A And I would like to direct the Court's attention, first,
6 to the first pair of numbers.

7 Q Is your pointer working?

8 A Well, no, actually.

9 Q Technical flaw.

10 A We'll try using words instead. Here we go. In the
11 northwest corner there, there's a pair of numbers, 6 and 8.
12 And those represent the results of one segment analysis. In
13 that particular analysis, there were six segments that were of
14 the race type; that is, they supported the race hypothesis over
15 the political hypothesis; and there were eight segments that
16 did just the opposite, supported the party hypothesis over the
17 race hypothesis.

18 But in doing that segment analysis, I used the entire
19 black population for purposes of measuring the race within each
20 precinct; that is, I noted the proportion of the entire
21 population associated with each precinct that were blacks.
22 Now, there are other ways, as has been brought out already
23 today in testimony, of measuring the representation of blacks.
24 One could use, for example, a black voting-age population.
25 Well, that's covered in the next line down.

1 If we use black voting-age population as a basis for
2 doing a segment analysis, in the first column there, the pair
3 of numbers, 7 and 7, show up underneath the first two that we
4 talked about. And that reflects the fact that for that
5 particular segment analysis, there were seven segments that
6 supported the race hypothesis and seven segments that supported
7 the political hypothesis. Same number of segments in each
8 case.

9 But as there are different ways of measuring the
10 representation of blacks, so, too, are there different ways of
11 measuring the representation of Democrats. And what was done
12 in the first column there is to base the representation of
13 Democrats on the percentage of registered voters in each
14 precinct who are registered as Democrats.

15 The next column over -- in fact, the next three
16 columns over are all based not on just voter registration party
17 identities, but rather, on behaviors of voters in actual
18 elections. So the next column over pertains to the 2008
19 gubernatorial election in North Carolina. The next column over
20 pertains to the 2008 presidential election in North Carolina.
21 And the final column -- ah, we have a cursor on the screen here
22 that may help -- thank you very much, Stacy. In the 2010
23 election, we have the senatorial election in North Carolina.

24 So we have four different ways of measuring the
25 representation of Democrats coupled with three different ways

1 of measuring the representation of blacks for a total of 12
2 different studies, 12 different segment analyses, the results
3 of all of which are presented in this one table.

4 Q Clarifying point, Dr. Peterson. So it's -- Table 1 sets
5 forth the results of not a single segment analysis, but 12
6 segment analyses?

7 A That's correct, yes.

8 Q Thank you.

9 A The same analysis repeated using different measures of
10 racial representation and different measures of representations
11 of Democrats.

12 I should mention that the final line in the table is
13 all based on the representation of blacks among registered
14 voters. That's the third way that I measured black
15 representation.

16 If you look over in the rightmost two columns, you'll
17 see going down there that, in every case, the number of
18 segments supporting the race hypothesis exceeds the number of
19 segments supporting the party hypothesis.

20 Looking at the first column on the left under the one
21 that we started at up in the northwest corner, we see that in
22 that instance, the race hypothesis is supported by six
23 segments, whereas the party hypothesis is supported by eight
24 segments. So, looking at the overall balance just with that
25 one study, there's more support in the segment analysis for the

1 party hypothesis, that the boundary was drawn for political
2 reasons rather than race.

3 The next line down, we noticed the balance was just
4 even, so there's a tie. The next line down, we know that,
5 again -- we see again that the balance tips in favor of the
6 political hypothesis.

7 Moving over to the next column, we see the same
8 pattern again. The top entry favors the political hypothesis.
9 The next entry down, there's an even balance. The third line
10 down, again, the balance tips in favor of the political
11 hypothesis. But in the last two columns in every single case,
12 the balance tips in favor of the race hypothesis. And
13 furthermore, it tips more extremely in favor of the race
14 hypothesis in each of those six cases than in any of the cases
15 in which it tips in favor of the political hypothesis.

16 Viewed as a whole, Table 1 indicates that there's
17 more support for the race hypothesis than for the political
18 hypothesis.

19 Q Thank you, Dr. Peterson. For just a minute, I'd like you
20 to focus on the segment analysis, comparing the 2008
21 presidential results with three different measures of the black
22 population. Is it true that in every one of those analyses,
23 the race hypothesis better explains the boundary of the
24 district than the party hypothesis?

25 A Yes, that is true.

1 Q Okay. Now, Dr. Peterson, did you repeat this segment
2 analysis for Congressional District 1?

3 A Yes, same analysis, but, of course, different data.

4 Q And if you would turn to page 2 of the notebook in front
5 front of you, there appears your fourth statistical report
6 marked Plaintiff's Exhibit 16. And I would ask you,
7 Dr. Peterson, if that sets out your segment analysis for
8 Congressional District 1?

9 A Yes, it does.

10 Q And would you describe for the Court that study.

11 A Yes. This is the same analysis that I did for the 12th
12 District, except I did it for the 1st District.

13 Q And are the results of your study for Congressional
14 District 1 set forth in Table P5.1 --

15 A Yes.

16 Q -- appearing on page 6 of Plaintiff's Exhibit 16 and now
17 on the screen?

18 A Yes, that is correct.

19 Q Okay. And would you review with the Court the results set
20 forth in Table P5.1 on page 6?

21 A Yes. The -- again, there wasn't just one segment analysis
22 that was done. There were 12 analyses done using three
23 different measures of racial representation -- of black
24 representation, rather, and four different measures of the
25 representation of Democrats. And what you see there is that in

1 the first column, in every single instance, the race hypothesis
2 is more strongly supported than the political hypothesis.

3 And in the last column, in every single case, the
4 race hypothesis is supported more strongly than the political
5 hypothesis. And in the bottom row, which overlaps the first
6 and last columns, the same is true.

7 Only for the four studies sort of in the middle upper
8 central part of the table is there a departure from this
9 pattern. And, in the second column, the top pair of numbers, 8
10 and 9, show that there's slightly more support for the
11 political hypothesis than for the race hypothesis.

12 And the next one down, the 7 and the 8, show that,
13 again, there's slightly more support for the political
14 hypothesis than for the race hypothesis.

15 And then moving over to the next column, looking at
16 the first two rows, we see there are two ties there; in the
17 first instance, eight segments supporting the race hypothesis
18 over the political hypothesis, and eight segments supporting
19 the political hypothesis over the race hypothesis. And the
20 next line down is 6 and a 6.

21 So, overall, there are eight instances in which the
22 segment analysis comes out more strongly in favor of the race
23 hypothesis than the party hypothesis, two instances in which
24 there's a tie, and two instances in which the political
25 hypothesis is ever so slightly favored over the race

1 hypothesis. Again, in every instance in which the race
2 hypothesis has more support than the political hypothesis, the
3 degree of imbalance is greater than in any instance in which
4 the political hypothesis has more support than the race
5 hypothesis.

6 Overall, I think you have to say that Table P5.1, the
7 segment analyses, are more strongly supportive of the race
8 hypothesis than they are of the political hypothesis.

9 Q So is it correct, Dr. Peterson, that based on your segment
10 analysis for Congressional District 1 and Congressional
11 District 12, as enacted by the defendants in 2011, you conclude
12 that the race hypothesis better accounts for the boundary of
13 both districts than the political hypothesis?

14 A Yes, that is correct. And I should point out, I think,
15 that this is not the first time I've ever done a segment
16 analysis.

17 Q I wanted to talk just a little bit about that. You did
18 this once before, I believe?

19 A I have, yes.

20 Q And could you explain to the Court the circumstances under
21 which you undertook to do a segment analysis and what you
22 found?

23 A I did this in connection with a *Cromartie* litigation in
24 the Wake of the 1990 Census. And again, it was the 12th
25 District which was being challenged. And the results that I

1 found in that instance were just the opposite of what I found
2 this time. So I found that there was more support for the
3 political hypothesis than for the race hypothesis.

4 Q And do you -- are you aware of the black voting-age
5 population percentage in the version of Congressional District
6 12 you were examining in the *Cromartie* legislation --
7 litigation?

8 A No.

9 Q Okay. Now, Dr. Hofeller, I believe, undertook to respond
10 to your segment analysis for Congressional District 12; is that
11 correct?

12 A Yes.

13 Q And is that set out at Tab 3 of of your witness notebook,
14 which is the affidavit of Thomas Hofeller, or the portion of it
15 that Mr. Hofeller filed in the *Dickson* matter on January 9,
16 2012?

17 A Yes.

18 Q And can you describe for the Court the response
19 Dr. Hofeller made to your analysis of Congressional 12?

20 A Yes. Dr. Hofeller responds just to my second affidavit,
21 the one that addresses District 12. So far as I'm aware, he
22 has made no response to my analysis of District 1.

23 His response to my analysis begins on page 17 of his
24 affidavit, in paragraph 45, and pretty much runs to the end of
25 that affidavit. And it seems to me that the real meat of his

1 response is contained in his paragraph 59 on page 21. And his
2 paragraph 59 rests on an analysis of the data shown in his
3 Appendix 2.

4 Q And can we put Appendix 2 on the -- thank you.

5 Is this Appendix 2 from --

6 A Yes, it is.

7 Q -- Mr. Hofeller's response?

8 A Yes.

9 Q And can you use that to explain his response?

10 A Sure -- well, yes, as best I understand it. What
11 Dr. Hofeller does is to distinguish three different geographic
12 areas. There's a geographic area that is in both the old
13 version of District 12 and in the new. It's what he refers to
14 as -- well, an area in the new and the old 12th. You might
15 think of it, I suppose, as some sort of core area.

16 And then there's an area that is only in the old 12th
17 District but not in the new, so it was taken out of the 12th
18 District in the process of forming the new. And then there's
19 an area that's only in the new, something which was not in the
20 old, but now it's in the new.

21 And for each of these areas, in Appendix 2,
22 Dr. Hofeller supplies some data, on the one hand, the
23 representation of blacks in that area; and on the other, the
24 representation of Democrats based on the 2008 presidential
25 election.

1 And what he does is to note in a central column here
2 that the representation of black voting -- representation of
3 blacks among the voting-age population in the first of these
4 districts, the core district, the part that's in the old 12th
5 District and also in the new, that the representation of blacks
6 among the voting-age population is 54.22 percent. And then
7 underneath that, that the representation of blacks among the
8 voting-age population only in the old 12th District, but not in
9 the new, is 22.77 percent. And then underneath that, that the
10 representation of blacks only in the new portion of the 12th
11 District but not in the old is 43.24 percent. And then
12 underneath that, he shows 20.47 percent, which is the
13 difference between the 43.24 percent and the 22.77 percent.

14 So we'll hold that thought and move on to the
15 analogous data here for the representation of Democrats. And
16 what he shows in this table is that in the core area, the
17 representation of Democrats as measured by the presidential
18 election in 2008 was 79.92 percent. The representation of
19 Democrats only in the old 12th District was 53.01 percent. And
20 that the representation of Democrats in the new part of the
21 12th District is 75.39 percent. And, again, underneath that,
22 there is a percentage shown, 22.38 percent, which is the
23 difference between 75.39 percent and 53.01 percent.

24 Now, by some process, which is not entirely clear to
25 me, Dr. Hofeller reaches the conclusion stated in the last

1 sentence of his paragraph 59, which is, quote:

2 "The only political decision which one can perceive
3 by the desire to place the lower performing VTDs into the 12th
4 District is an attempt to submerge Republican vote in a safe
5 Democrat seat."

6 I have to confess, I don't see how he gets there from
7 the data in Appendix 2. And, indeed, I don't even understand
8 what that conclusion means, but --

9 BY MR. SPEAS:

10 Q Did you undertake to examine Dr. Hofeller's response to
11 your Congressional 12 affidavit?

12 A Well, as I interpret Appendix 2, it was meant for us
13 somehow to look at the 20.47 percent and the 22.38 percent and
14 come to some sort of conclusion. And the only conclusion that
15 leaps out at me is that, in taking out part of the
16 12th District and replacing it with a new piece of North
17 Carolina not previously in the 12th District, this had the
18 effect of increasing the representation of blacks by this
19 20.47 percent.

20 That's really not a percentage increase, but it's a
21 difference in the two representations that I've already
22 described the calculation of. But it also had the effect of
23 changing the representation of Democrats in the 12th District.
24 And the difference calculated, analogously, is 22.38 percent.

25 And it seems to me that the comparison that's invited

1 here is the 22.38 percent against the 20.47 percent. And
2 maybe, what we're supposed to observe here is that the
3 22.38 percent being greater than the 20.47 percent, we should
4 infer that it was politics more than race that influenced the
5 creation of the new 12th District.

6 And if that is the right interpretation, that's a
7 false conclusion for reasons which I hope presently to
8 demonstrate.

9 Q And do you explain why that is a false conclusion in your
10 third affidavit, which appears after Tab 4, and which is marked
11 as Defendant's Exhibit D118?

12 A Yes.

13 Q And would you explain for the Court what is set forth in
14 that third affidavit?

15 A It may be most expeditious to look at Table P3.1 at least
16 briefly.

17 Q And that's now on the screen. And Table P3.1 appears in
18 that report as -- at the end as immediately following your
19 signature page; correct?

20 A Yes, immediately following page 7.

21 Q Could you explain what appears on Table P3.1?

22 A Yes. What appears on -- one of the things that we learned
23 from the segment analyses, both of the 1st District and the
24 12th District, is that it makes a difference how you measure
25 black representation or how you measure the representation of

1 Democrats in a precinct.

2 And so what I've done in Table P3.1 is just to take
3 Dr. Hofeller's Appendix 2 table, which measures race only one
4 way and measures Democrat percentages only one way, and expand
5 it to measure race three different ways, the three ways that
6 were used in the segment analysis, and political affiliation
7 four ways, the four ways that are used in the segment analysis,
8 instead of just the one way that's used in Appendix 2.

9 And the reason why I said maybe we'll just look at
10 Table P3.1 briefly is that it's a mess. There's a lot of data
11 there, and it's very difficult to pick stuff out. So I suggest
12 we segue to Table P3.2, which is now on the screen, and which
13 appears immediately after P3.1 in your affidavit.

14 A Yes.

15 Q Can you describe for the Court --

16 A Yes. In Table P3.2, what I've done is, essentially, 12
17 different versions or 12 different variations on the study that
18 I think Dr. Hofeller presents in his Appendix 2.

19 So, once again, there are 12 entries there
20 corresponding to the three different ways of measuring the
21 representation of blacks and the four different ways of
22 measuring the representation of Democrats that we encountered
23 previously in connection with segment analyses.

24 And, in each case, in the body of the table, I've
25 entered a P if the comparison afforded by the -- by parallel

1 analysis of Dr. Hofeller's Appendix 2 supports the party
2 hypothesis over the race hypothesis. And I've entered an R
3 where the opposite is true, where doing the type of analysis
4 that I attribute to Dr. Hofeller, in his Appendix 2, it turns
5 out that the comparison of the two percentages is such as to
6 favor the race hypothesis over the political hypothesis. And
7 the percentages being compared are shown in that table across
8 the top there, the 16.49 percent, the 22.38 percent, the
9 19.64 percent, and the 25.31 percent, all being percent --
10 percent representations of Democrats.

11 And going down the left side of the table, the
12 21.46 percent, the 20.48 percent, and the 25.17 percent being
13 the representations -- changes in the representations of
14 blacks. And the comparison of the percentages shown in the
15 column headings and the percentages shown in the row headings
16 gives rise to the R or P in the body of the table.

17 And, as we look across this table, we see that in
18 five instances, there are Ps, and in seven instances, there are
19 Rs, which is to say the -- on balance, the evidence here would
20 seem to tip in favor of the race hypothesis over the political
21 hypothesis.

22 Q And what, Dr. Peterson, is displayed in Table P3.3
23 immediately below?

24 A Well, that's another analysis of almost the same type,
25 except that if we could go back to -- if we could go back to

1 Appendix 2 for a minute, I want to point something out.

2 Q Do we have -- Appendix 2 is now on the screen.

3 A Here we are. Okay. And what I would like to point out is
4 that when we were calculating the difference in representation
5 of blacks, what we did was to -- in that table and looking at
6 the column pretty much in the middle of the table, what we did
7 was to subtract 22.77 percent from 43.24 percent, coming up
8 with the 20.47 percent. Well, that's one way of measuring the
9 differences between two percentages, but there's lots of other
10 ways.

11 And one of the most common is to take the ratio.
12 Suppose we divide the 43.24 percent by 22.77 percent and see
13 what percentage there has been an increase in the
14 representation of blacks. And suppose we do the same thing
15 with respect to Democrats. In the rightmost column, what we'll
16 do is instead of subtracting one percentage from the other,
17 we'll take the ratio of the 75.39 percent to 53.01 percent and
18 use that as a measure of the difference between those two
19 percentages.

20 Q And are the results of that --

21 A And if you -- if you repeat the analysis that I reported
22 on in Table P3.2, using percentage increases instead of simple
23 difference increases, you get Table 3.3.

24 Q And it's back on the screen -- okay. It's back on the
25 screen.

1 A And it's back on the screen now. Again, the percentages
2 are arrayed across the top and down the left side of the table.
3 You compare those two at a time, and register a P or an R in
4 the body of the table depending as the percentage in the row is
5 greater or less than the percentage in the column. And, my
6 goodness, in every single case, the race hypothesis is -- has
7 more support than the political hypothesis.

8 Q Dr. Peterson, at the end of the day, after analyzing --
9 conducting this analysis of Congressional District 12, the
10 segment analysis, in the application of your expertise in
11 applied mathematics, what is your view with regard to the
12 question whether race or politics better accounts for the
13 boundary of Congressional 12?

14 A Well, the segment analysis shows that with respect both to
15 the 1st District and to the 12th District, that there is more
16 evidence that -- there's a better correlation with race than
17 with political considerations in the placement of the boundary.

18 The -- my re-analysis of Dr. Hofeller's Appendix 2
19 indicates, in the first instance, the 12 studies that are
20 reported in Table 3.2, that on balance, there's more support
21 for the race hypothesis than the political hypothesis. And in
22 Table P3, which reports on another dozen analyses based on
23 Dr. Hofeller's Appendix 2, that, once again, race better
24 accounts for the boundary than the political hypothesis.

25 MR. SPEAS: Thank you, Dr. Peterson. No more

1 questions at this time.

2 THE COURT: Cross-examination?

3 MR. STRACH: Thank you, Your Honor. Good afternoon,
4 Dr. Peterson.

5 THE WITNESS: Mr. Strach.

6 MR. STRACH: Yes, Phil Strach for the defense. We've
7 met, it's been several years now, in your deposition; is that
8 correct?

9 THE WITNESS: That's right, yes.

10 MR. STRACH: I've got just a few questions for you
11 about your analysis.

12 CROSS-EXAMINATION

13 BY MR. STRACH:

14 Q I want to focus, first of all, though, on making it clear
15 in my mind what you are not concluding.

16 A Okay.

17 Q Based on a review of your reports, you are not saying, are
18 you, that if race, quote: "Better accounts for the boundary"
19 of the 12th or the 1st, that therefore, race predominated or
20 was the motivating factor for the district?

21 A That's correct, I am not saying that.

22 Q All right. And it's also fair to say, isn't it,
23 Dr. Peterson, that you're not drawing any conclusions about a
24 causal effect between what the map drawer was doing and what
25 was -- and the motive. You're drawing a correlation, not

1 causation; is that correct?

2 A That's right. What I'm looking at is an effect. I'm not
3 opining as to why that happened the way that it did.

4 Q All right. Now -- and that's important, I think, because
5 it's true, isn't it, Dr. Peterson, that you've never actually
6 drawn a redistricting map; isn't that right?

7 A I have participated in the redistricting process, but not
8 at the point of actually drawing districts.

9 Q All right. And at least as of the time that we had our
10 deposition together, you were not familiar with a computer
11 program called Maptitude; is that correct?

12 A Not familiar enough to be able to use it. I may have seen
13 it on a lab visit that I made, but I'm not -- I'm not familiar
14 with it to the point that I could actually use it.

15 Q Okay. And is it your understanding that, at least in this
16 particular case, it was the computer program Maptitude that was
17 used by Dr. Hofeller to draw these districts?

18 A I don't have an understanding on that point.

19 Q All right. And let me make sure I understand the way you
20 conduct your segment analysis. If I am correct, your analysis,
21 as you said, walks around the boundary of the district; is that
22 right?

23 A Conceptually, yes.

24 Q All right. And you understand, don't you, Dr. Peterson,
25 that when a map drawer draws a district, they do not draw it in

1 a sequential manner like that?

2 A Well, yes and no. The person who constructed both the
3 12th District and the 1st District was obviously working with
4 precinct-sized chunks of North Carolina, because the
5 boundaries, in so many instances, follow precinct lines, not
6 all instances, but in many instances. So it's pretty clear
7 that precincts figured in the creation both of the 12th and of
8 the 1st District, but I can't say that the focus of the person
9 who was constructing the map was on segments and their inside
10 and outside precincts.

11 Q In other words, it's probably pretty unlikely that the map
12 drawer or a map drawer would draw one segment of a district and
13 then analyze it for race versus party, and then proceed to the
14 next district and so forth in drawing the district.

15 A Not exactly that way. I think it's more likely that the
16 voting district drawer would consider the inclusion of a
17 precinct within or perhaps consider exchanging it with another
18 precinct or something like that. I think precincts loomed
19 large in the decision process, but exactly how they were used,
20 I can't say.

21 Q And your analysis looks at each -- I think what you called
22 inside precinct, and then compares it to the precinct
23 immediately on the outside of the boundary; correct?

24 A Yes.

25 Q But when someone's drawing a map, they may very well pick

1 one precinct at the southern part of the district in exchange
2 for a precinct at the top part of the district?

3 A They might, yes.

4 Q So when a map is actually being drawn, it's not
5 necessarily a one-to-one inside versus outside choice?

6 A That's correct.

7 Q And your analysis assumes a binary choice for the map
8 drawer when selecting the precinct?

9 A Not really. What it's looking at is an overall pattern.
10 And, in that sense, it's much like the calculation of a
11 correlation.

12 MR. STRACH: Okay. Your Honor, I'm about to go into
13 another line that could take us a while, and I'm happy to do
14 that at your --

15 THE COURT: One second. Keep on going for a while
16 longer.

17 MR. STRACH: All right. Thank you, Your Honor.

18 BY MR. STRACH:

19 Q Dr. Peterson, could you explain to the Court the concept
20 of -- we talked about this at your deposition, called -- let me
21 find it in my notes here, Forensic Decision Analysis?

22 A Sure. I wrote a book about Forensic Decision Analysis.
23 And it's a -- it's an approach to trying to figure out why
24 decisions were made the way they were after the fact.

25 Q Is your segment analysis a species of this Forensic

1 Decision Analysis?

2 A It is, but it's -- but it's a better illustration of the
3 kind of compromise sometimes one has to make with a good
4 Forensic Decision Analysis to apply it in practical
5 circumstances. It's not a very good example of a Forensic
6 Decision Analysis or at least an ideal Forensic Decision
7 Analysis.

8 Q Right. And that's because with a Forensic Decision
9 Analysis, ideally, you're able to account for all of the
10 alternative decisions that were available to a decision-maker
11 in evaluating what motivated the decision; is that right?

12 A Yes.

13 Q And in your segment analysis, it's not possible for you to
14 have accounted for all the many other factors or variables that
15 a map drawer had to think about when choosing to select or
16 deselect a particular precinct?

17 A That's correct. And part of the difficulty is the
18 unavailability of data. We have data only at the precinct
19 level. And even what's available at the precinct level is
20 pretty much in summary form. So there's a limit to how close
21 we can actually get to the decision process in a segment
22 analysis.

23 Q All right. So, for instance, if the map drawer with
24 respect to, say, District 12 is trying to accomplish a
25 political result in four or five of the surrounding districts

1 to that district, your segment analysis can't perfectly capture
2 the extent to which that political goal factored into the
3 boundary?

4 A That's correct. All I'm doing is measuring sort of an
5 overall correlation. I'm looking at the result, not the
6 process.

7 Q Okay. Let's talk about -- well, let me actually go back
8 to the *Cromartie* case and your analysis in the *Cromartie* case.
9 I want to make sure that this is clear to the Court. In the
10 *Cromartie* case, you were hired by the State --

11 A Yes.

12 Q -- at that point in time; right?

13 A Yes.

14 Q And the State, in that case, was trying to defend the 12th
15 District from a racial gerrymandering claim much like this one;
16 correct?

17 A That's correct.

18 Q And you were hired -- were you hired by Mr. Speas in that
19 case?

20 A I don't recall who actually hired me, but I worked with
21 Mr. Speas in that case.

22 Q All right. In that case, your analysis produced a result
23 that was favorable to the position Mr. Speas's client was
24 taking in the case?

25 A Yes.

1 Q And that particular conclusion was that race couldn't have
2 predominated because politics was a, quote, "better explanation
3 for the district"?

4 A Yes.

5 Q All right. So --

6 A Well, I don't know that I reached the conclusion that race
7 couldn't have predominated. What I showed was that, according
8 to a segment analysis, politics was a better explanation for
9 the boundary than was race.

10 Q And in that case, you understood that the burden was on --
11 the State simply had to show that something else better
12 explained the district in that case; is that correct? In other
13 words --

14 A Could you rephrase the question?

15 Q You were working on this side of the aisle in that case --

16 A Right, that's true.

17 Q -- right? And so, what you had to show, the burden wasn't
18 on the State. You just simply had to show --

19 MR. SPEAS: Your Honor, objection. He's questioning
20 him about a legal matter.

21 THE COURT: Yeah, I agree. Let's rephrase the
22 question.

23 MR. STRACH: All right.

24 THE COURT: I think it's getting a little confusing
25 in terms of an applied mathematics expert talking about burdens

1 of proof in a courtroom.

2 THE WITNESS: Right. I'm not a lawyer.

3 THE COURT: Hold on just a second.

4 THE WITNESS: Sure.

5 THE COURT: I'm not sure a foundation's been laid
6 enough to get into something along this --

7 MR. STRACH: All right. Thank you, Your Honor.

8 THE COURT: -- at least as the question was framed.

9 BY MR. STRACH:

10 Q I think -- so I'll just leave it at in that particular
11 case, though, you were working on the behalf of the State; is
12 that correct?

13 A Yes.

14 Q And in this particular case, though, you were working on
15 behalf of the challengers challenging the claim --

16 A That's correct, yes.

17 Q -- is that correct? All right. Thank you. All right.
18 Let's look at District 12, Dr. Peterson.

19 A Okay.

20 Q I want to focus on that. And I want to look at, first of
21 all, you mentioned in your testimony with regard to the 12th
22 District, I believe that the way you call it in your report is
23 there's 330 pairs?

24 A Well, 330 segments, which means 330 pairs of precincts.

25 Q Okay. And out of those 330 segments, sort of going around

1 the 12th District, you could only use 29; is that correct?

2 A I don't have a figure in mind, but that's about right.

3 Q All right. And that's because in the vast majority of
4 those pairs or those segments, you couldn't make a
5 determination of race versus party based on the data you had?

6 A That's right. There was a lot of -- most of the pairs, 80
7 to 90 percent of the pairs were both type -- what I call Type B
8 and Type D pairs; that is, the representation of blacks was
9 greater inside than outside, and the representation of
10 Democrats was greater inside than outside for most of the way
11 around both of those boundaries.

12 Q And Dr. Peterson, are you familiar with a concept called
13 multicollinearity?

14 A I am, but I don't see how that applies under these
15 circumstances.

16 Q Do you agree with me that, in North Carolina, there's a
17 high correlation between race, including black, and
18 registration in the Democratic Party?

19 A I believe there is, yes.

20 Q And also voting behavior, there's a high correlation
21 between race being black and voting for Democrat candidates?

22 A Yes.

23 Q All right. And so, is it likely that you could only look
24 at 29 out of the 330 segments because there's such a high
25 correlation of multicollinearity between race and party in

1 North Carolina with respect to blacks and Democrats that it
2 significantly reduced the population of segments that you could
3 look at?

4 A To me, "multicollinearity" means something quite different
5 from that. But, I think, just put in simple words, it is true
6 that for most of the way around the boundary, both the 12th
7 District and the 1st District, blacks are represented more
8 heavily inside than outside, and so, too, are Democrats.

9 Q All right. So in your second affidavit, which, I believe,
10 is P15, which I think is behind Tab 1 in your notebook,
11 Dr. Peterson, if you could pull that out.

12 A Sure.

13 Q I want to take a look at your chart in paragraph 14. And
14 we, in your direct testimony -- are you there? Tab 1, it
15 should be page 6.

16 A Yes.

17 Q And in that chart, you tallied up the results of the 12
18 studies; correct?

19 A Yes.

20 Q And so, there are 12 results, and each result is either a
21 P, or an R, or it's tied; is that correct?

22 A In effect, yes. I didn't actually record Ps and Rs here,
23 but --

24 Q Right. And that's what I want to -- I want to look at the
25 Ps -- I know they're not in your report, but I want to look at

1 the actual number of Ps and Rs.

2 A Sure. Let's do it.

3 Q Okay. So, when I look at this chart, I tally up -- and
4 you tell me if I'm wrong -- that there are six Rs all together?

5 A Yes, that's right.

6 Q Okay. So six studies in which you would contend that race
7 was the better hypothesis?

8 A Yes, there's more support for the race hypothesis than the
9 political hypothesis.

10 Q All right. And then, of the 12, as I count them, there
11 are four Ps; is that correct?

12 A Yes, that's correct.

13 Q And then, there are two that are neutral, or tied?

14 A Yes.

15 Q All right. So, in all of the 12 studies for the 12th
16 District and your segment analysis, what you have actually are
17 six in which the race hypothesis, you say, is -- better
18 accounts for it, but six where race was not the better
19 hypothesis; is that correct?

20 A That is true.

21 Q All right. And then, Dr. Peterson, if you would explain
22 to the Court -- there's a paragraph in your affidavit here
23 about it. Would you explain to the Court what you mean by an
24 unequivocal pair?

25 A Yes. There are some segments that no matter how you

1 measure race and no matter how you measure party affiliation,
2 turn out to be either Type R segments, that is, they support
3 the race hypothesis over the political hypothesis; or they turn
4 out to be Type P, they support the political hypothesis over
5 the race hypothesis. But their number is very small; there's
6 one of each.

7 So, in common with all 12 of these studies, there is
8 one segment in the 12th District which is, in every study, a
9 Type R segment, and there is one segment which is, in every
10 single study, a Type P segment. One of each.

11 Q Okay. So in those instances, the data is unequivocal as
12 to one or the other?

13 A I'm -- well, I would say they are equivocal with respect
14 to the two hypotheses. There's equal support for the two.

15 Q Okay. And that's the point. So, where you look only at
16 the unequivocal pairs, one being a P and one being an R, then
17 you would have to conclude with respect to those that race and
18 party are equal explanations?

19 A If that was the only thing I knew about it, that is the
20 conclusion I would reach --

21 Q All right.

22 A -- but I happen to know more.

23 Q Right. Okay. And let's look at some of the more. Let's
24 look at your third affidavit, which is -- I believe it's behind
25 Tab 4. And, in particular, I want to look at Table 3.2 that

1 you looked at with Mr. Speas.

2 A I've got it.

3 Q Got it? All right. Are you aware, Dr. Peterson, of
4 testimony by Dr. Hofeller in the *Dickson* case, the State case,
5 that when the 12th District was being drawn, the data that was
6 being used to draw that was voting -- black voting -- or
7 voting-age population and the percent of Obama-McCain vote?

8 A I don't know that I'm acquainted with that testimony, but
9 that is the import, I think, of his Appendix 2.

10 Q Right. Okay. That being that when one looks at the
11 percentage of Obama vote in the selected precincts that -- in
12 his Appendix 2, the percentage of Obama -- the Obama percentage
13 was higher than the race percentage; correct?

14 A Yes --

15 Q Okay.

16 A -- in Table P3.2, not in Table P3.3.

17 Q Right. Now, in Table P3.2, I'm not sure it was shaded on
18 the version that was on the computer earlier, but in the actual
19 affidavit, Dr. Peterson, I believe you shaded a particular unit
20 on Table P3.2; is that correct?

21 A I did, and it hasn't come through on the copies, but I can
22 tell you what should have been shaded, what, in fact, was
23 shaded.

24 Q All right. The one that should have been -- was shaded in
25 your original report was the bloc that is the intersection of

1 the row of voting-age population and the column of percent
2 Obama; correct?

3 A Yes, that is correct.

4 Q And in that particular bloc, your study concluded that
5 party was the better indicator?

6 A Well, I would attribute the study to Dr. Hofeller, but,
7 yes.

8 Q So when you look at the data that Dr. Hofeller said that
9 he looked at in drawing the 12th District, then your data shows
10 that party is the better explanation; is that true?

11 A In the Table P3.2 analysis, not in the Table 3.3 analysis.

12 Q All right. And now, let's look at Table 3.3. In Table
13 3.3, what you did was you converted Dr. Hofeller's data to
14 ratio; is that correct?

15 A Yes, as an alternative way of measuring the difference
16 between two numbers.

17 Q All right. And what evidence do you have that converting
18 those numbers to ratios is more reliable or valid?

19 A There's -- I can't say that one is more reliable or valid
20 than the other. They're just two different ways of looking at
21 the same data.

22 Q All right. And the way you did the data happened to
23 support your theory of the case; correct?

24 A It happened to. I didn't know it was going to before I
25 did it.

1 Q All right. Let's focus for a moment on the 1st District.
2 Let's turn back to your fourth affidavit, which, again, I
3 believe -- well, it's a different one. I believe that's under
4 Tab 2 in your notebook, Dr. Peterson?

5 A Yes.

6 Q And in particular, I want to look again -- first of all,
7 let's talk about those unequivocal pairs again, segments.

8 A Yes.

9 Q Isn't it true that with regard to the 1st District, again,
10 you found two unequivocal pairs, and one was P and one was R?

11 A I have to look at the affidavit to see because --

12 Q Sure. If you look at paragraph 16 --

13 A Paragraph 16, right. Yes. One of each.

14 Q Okay. So as with the 12th District, with the 1st
15 District, when you looked only at the data that was segments
16 that were unequivocal, they basically cancelled each other out,
17 race versus party?

18 A That's right, yes.

19 Q All right. Okay. And then let's look at --

20 MR. STRACH: Excuse me for a moment, Your Honor.

21 Okay.

22 BY MR. STRACH:

23 Q If we look, Dr. Peterson, at -- this is your fourth
24 affidavit, page 6. And, again, this is your Table P5.1 on
25 page 6.

1 A Got it.

2 Q All right. So, again, if you try to find the intersection
3 here in this chart, the study that represents the intersection
4 between voting-age population and votes for the -- in the
5 presidential race; right?

6 A Yes.

7 Q Black voting-age population is in the middle, 2008
8 president is a column second from last. And if you trace the
9 intersection of those two pieces of data, that study showed
10 that race and politics were tied; is that correct?

11 A Yes.

12 Q Dr. Peterson, let me talk a little bit about the mechanics
13 of -- and in particular, talking about the 12th Congressional
14 District, talk about the mechanics of constructing the
15 district. When I -- if I use the term "Transit VTD," do you
16 have any idea what that means?

17 A Not exactly, but as you talk, I may develop an
18 understanding.

19 Q All right. So, if you have a population in the district
20 in the north and a population in the district in the south,
21 you've got to connect the two somehow; is that correct?

22 A If they're going to be in the same district, yes.

23 Q Right. And that goes back to the fact that, sometimes,
24 decisions up here affect decisions down here, and then you've
25 got to connect the two; is that fair?

1 A Yes.

2 Q Do you -- did you attempt to do any analysis or does your
3 segment analysis account at all for decisions that have to be
4 made in terms of which -- choosing a corridor or transit VTDs
5 to go from one population to another?

6 A No, it just looks at the overall result, doesn't look at
7 the process.

8 Q All right. And then, when you were deciding which VTDs or
9 segments would be a P versus an R, you actually started by
10 looking at which segments, which would be a B versus a D --

11 A Yes, that's correct.

12 Q -- black versus Democrats; is that right? And as I
13 understand the analysis, you decided whether it was a B or a D
14 by adding up, say, the number of Democrats inside -- the inside
15 VTD and subtracting the number of Democrats from outside the
16 VTD; is that fair?

17 A No, that's not right.

18 Q Explain to the Court how you did that.

19 A Sure. What I did was to look to the inside to see what
20 the representation of Democrats was; that is, among, let's say,
21 registered voters, what percentage of people residing in the
22 inside precinct were registered as Democrats among the totality
23 of voters who were registered.

24 And then, I did a similar thing for the outside
25 precinct. And I compared those two percentages, the two

1 representations, degrees of presence of Democrats. And then I
2 did the analogous thing for blacks.

3 Q And you looked at which one was higher?

4 A And I just looked at which one was higher, yes.

5 Q Okay. And you just looked at the raw numbers; correct?

6 A And determined which of the numbers was greater, inside or
7 outside.

8 Q It didn't matter if it was even greater just by one?

9 A That's right.

10 Q So even by one person could determine --

11 A Well, one -- one percentage say.

12 Q Okay. One percentage could determine a segment's fate of
13 being labeled a B versus a D?

14 A Yes, that's true.

15 Q All right. And you could have -- if you had wanted to,
16 you could have weighted the percentages instead of taking the
17 raw data; correct?

18 A Could have done? I can't think of any reason why the
19 results would be more meaningful or reliable than the results
20 obtained the way I did it.

21 Q But you didn't do a weighted percentage?

22 A I told you everything I did. I didn't do anything else.

23 Q All right. Now, your segment analysis is also not able to
24 take into account decisions that are made by the map drawers
25 with regard to protecting incumbents?

1 A That's right. Again, I didn't look at process. What I've
2 done is just look at the overall result.

3 Q And you don't try to account for the impact of under or
4 overpopulation in a district?

5 A Well, not explicitly. Again, I assume some account was
6 taken of over or underpopulation in the choice of precincts to
7 include or exclude. But, again, I didn't look at process. The
8 segment analysis looks only at overall result.

9 Q All right. You don't make any attempt to try to control
10 for things like under or overpopulation?

11 A That's right. I didn't try to reconstruct the decision
12 process in its detail.

13 Q Okay. And it's also true, Dr. Peterson, that you did not
14 do any segment analysis for the alternative or competing plans
15 that were introduced in the legislature for -- certainly for
16 Congressional Districts?

17 A That's right. The only segment analysis I've done in
18 connection with this litigation are the two on which I have
19 reported.

20 Q All right. So we have no frame of reference in terms of
21 other plans and how they might have fared with the 12th and 1st
22 Congressional District?

23 A Would you repeat the question, please?

24 Q So we don't have a frame of reference for how the enacted
25 plans might have fared compared to a segment analysis of other

1 competing plans?

2 A Right. The only comparison I can offer is the one that I
3 mentioned already in connection with the 12th District as it
4 existed in the 1990s.

5 MR. STRACH: That's all I have, Your Honor.

6 THE COURT: Redirect.

7 MR. SPEAS: Three or four quick questions, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. SPEAS:

11 Q Dr. Peterson, would you turn to, I believe, the last --
12 next to the last page of Tab 1 where -- your second affidavit,
13 Plaintiff's Exhibit 15. And is that a map of Congressional
14 District 12?

15 A I have it.

16 Q And the yellow color signifies what?

17 A Those would be inside border precincts. Those are
18 precincts which were involved in the segment analysis of the
19 12th District on the inside.

20 Q Is this district a single precinct wide for much of the
21 way?

22 A For much of the way, it is a single precinct wide, yes.

23 Q And there are interior precincts only in the city of
24 Charlotte, the city of Greensboro, and the city of
25 Winston-Salem?

1 A Yes, I believe that -- well, actually, there's a third --
2 there are four areas in which there are inside precincts.

3 Q Okay. So, while you did not examine the core precincts in
4 your segment analysis --

5 A If the pinkish ones are termed "core precincts."

6 Q Yes. The truth is, most of the precincts in Congressional
7 12 were examined?

8 A It looks like most of them did get included in the segment
9 analysis, yes.

10 Q And that's because it's a single precinct wide through
11 much of its --

12 A That's right, so they got included on the left side and on
13 the right side.

14 Q All right. And now, you -- Mr. Strach asked you about a
15 number of issues about your methodology that you used here.

16 A Yes.

17 Q Did you use precisely the same methodology in *Cromartie*
18 that you used here?

19 A I know of no differences. My intent was to use exactly
20 the same, and I believe I did use exactly the same.

21 Q Okay. And the strength of the *Cromartie* analysis are
22 reflected here, the weaknesses of the *Cromartie* analysis are
23 reflected here?

24 A Yes.

25 Q And at the end of the day, in your professional opinion as

1 an expert in applied mathematics, do you still conclude that
2 race, not politics, on balance, accounts better for the
3 boundary of the district?

4 A That is true, yes.

5 MR. SPEAS: One final question. May I approach the
6 witness, Your Honor?

7 THE COURT: You may.

8 BY MR. SPEAS:

9 Q I'm going to place in front of you, Dr. Peterson, the
10 historical congressional map book labeled Defendant's
11 Exhibit 126. And I would ask you, Dr. Peterson, just to turn
12 Tab 3 of that document. And I would ask you if that is the
13 1997 Congressional Plan that included Congressional 12
14 litigated in *Cromartie*?

15 A I don't know. It might be. I'm, at this point, not as
16 familiar with the old District 12 as once I was.

17 Q Assuming it is --

18 A All right.

19 Q -- would you look, then, at the third page, has -- it said
20 the voting-age population or that version of Congressional
21 District 12. And what is it?

22 A It says here 43.36 percent.

23 Q Okay. And if you could look quickly at Tab 12 in
24 Exhibit 126, and is that the current plan?

25 A Again, I don't know. It might well be. I don't know that

1 it's not.

2 Q Assuming it is, would you turn to the voting-age
3 population for that district and tell me what the voting-age
4 population for Congressional 12 might be?

5 A We need to specify a page for the Court, it seems to me.
6 How can we do that?

7 Q Will you read page --

8 A Page 3 of 9.

9 Q And what is the voting-age population there?

10 A It appears to be 50 point --

11 Q Sixty-six?

12 A -- sixty-six. Could be. Could be 88. But in any event,
13 it's over 50 percent.

14 Q Would it be -- if these numbers are correct, then, in the
15 version of Congressional District 12 that you examined in
16 *Cromartie*, the black voting-age population was 6 percent lower
17 than the black population in the version of Congressional
18 District 12 you have examined here?

19 A That appears to be the case.

20 MR. SPEAS: No other questions.

21 THE COURT: Anything in response?

22 MR. STRACH: Nothing in response.

23 THE COURT: You may step down.

24 MR. SPEAS: May Dr. Peterson --

25 THE COURT: Any objection to Dr. Peterson being

1 excused?

2 MR. STRACH: No, Your Honor.

3 THE COURT: All right. He may be excused.

4 THE WITNESS: Thank you.

5 (At 5:28 p.m., witness excused.)

6 THE COURT: All right. So, hopefully, we'll have
7 some air conditioning tomorrow. Should we start right in with
8 your other expert or will there be other evidence?

9 MR. HAMILTON: No, Your Honor. Our last witness.
10 Will be Dr. Steven Ansolabehere, and we'll start with him right
11 at 9:00.

12 THE COURT: All right. Very good. And then you all
13 will be ready to move along with your evidence tomorrow as
14 well?

15 MR. FARR: Yes, Your Honor.

16 THE COURT: All right. Then, anything we need to
17 take up before we recess?

18 MR. FARR: Not from the defendants, Your Honor.

19 THE COURT: All right. We'll see everybody in the
20 morning, then, at 9:00. We'll be in recess until tomorrow
21 morning at nine.

22 (At 5:29 p.m., proceedings adjourned.)

23

24

25

* * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the proceedings in the above-entitled matter.

Date: 10/19/2015 Joseph B. Armstrong, RMR, FCRR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401

Exhibit 3

EXPERT REPORT OF JOWEI CHEN, Ph.D.

I am an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. I am also a Faculty Associate at the Center for Political Studies of the Institute for Social Research at the University of Michigan as well as a Research Associate at the Spatial Social Science Laboratory at Stanford University. In 2007, I received a M.S. in Statistics from Stanford University, and in 2009, I received a Ph.D. in political science from Stanford University. I have published academic papers on political geography and districting in top political science journals, including *The American Journal of Political Science* and *The American Political Science Review*, and *The Quarterly Journal of Political Science*. My academic areas of expertise include spatial statistics, redistricting, gerrymandering, the Voting Rights Act, legislatures, elections, and political geography. I have unique expertise in the use of computer algorithms and geographic information systems (GIS) to study questions related to political and economic geography and redistricting.

I have provided expert reports in the following redistricting court cases: Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District and St. Louis County Board of Election Commissioners (E.D. Mo. 2014); Rene Romo et al. v. Ken Detzner et al. (Fla. 2d Judicial Cir. Leon Cnty. 2013); The League of Women Voters of Florida et al. v. Ken Detzner et al. (Fla. 2d Judicial Cir. Leon Cnty. 2012); Raleigh Wake Citizens Association et al. v. Wake County Board of Elections (E.D.N.C. 2015); Corrine Brown et al. v. Ken Detzner et al. (N.D. Fla. 2015); City of Greensboro et al. v. Guilford County Board of Elections, (M.D.N.C. 2015). I have testified at trial in the following cases: Raleigh Wake Citizens Association et al. v. Wake County Board of Elections (E.D.N.C. 2015); City of Greensboro et al. v. Guilford County Board of Elections (M.D.N.C. 2015). I am being compensated \$500 per hour for my work in this case.

Research Question and Summary of Findings

The attorneys for the plaintiffs in this case have asked me to analyze North Carolina's current congressional districting plan, as created by Session Law 2016-1 (Senate Bill 2). Specifically, I was asked to analyze: 1) Whether partisan considerations were the predominant factor in the drawing of the 2016 enacted Senate Bill 2 (SB 2) districting plan; and 2) The extent

to which the enacted SB 2 plan conforms to the February 16, 2016 Adopted Criteria of the Joint Select Committee on Congressional Redistricting (The “Adopted Criteria”).

In conducting my academic research on legislative districting, partisan and racial gerrymandering, and electoral bias, I have developed various computer simulation programming techniques that allow me to produce a large number of valid, non-partisan districting plans in any given state, county, or municipality using either Voting Districts (“VTDs”) or census blocks as building blocks. This simulation process is non-partisan in the sense that the computer ignores all partisan and racial considerations when drawing districts. Instead, the computer simulations are programmed to optimize districts with respect to various traditional districting goals, such as equalizing population, maximizing geographic compactness, and preserving county boundaries and VTD boundaries. By generating a large number of drawn districting plans that closely follow and optimize on these traditional districting criteria, I am able to assess an enacted plan drawn by a state legislature and determine whether partisan goals may have motivated the legislature to deviate from these traditional districting criteria.

More specifically, by holding constant the application of non-partisan, traditional districting criteria through the simulations, I am able to determine whether the enacted plan could have been the product of something other than the explicit pursuit of partisan advantage. I determined that it could not.

I use this simulation approach to analyze the North Carolina General Assembly’s enacted SB 2 congressional districting plan in several ways. First, I conduct 1,000 independent simulations, instructing the computer to generate valid congressional districting plans that strictly follow all of the non-partisan criteria enumerated in the Adopted Criteria. I then measure the extent to which the enacted SB 2 plan deviates from these simulated plans with respect to the Adopted Criteria. The simulation results demonstrate that the enacted plan failed to minimize county splits and was significantly less geographically compact than every single one of the 1,000 simulated districting plans. By deviating from these traditional districting criteria, the SB 2 plan also managed to create a total of 10 Republican-leaning districts out of 13 total districts. By contrast, the simulation results demonstrate that a map-drawing process respecting non-partisan, traditional districting criteria generally creates either 6 or 7 Republican districts. Thus, the enacted plan represents an extreme statistical outlier, creating a level of partisan bias never observed in any of the 1,000 computer simulated plans. The enacted plan creates 3 to 4 more

Republican seats than what is generally achievable under a map-drawing process respecting non-partisan, traditional districting criteria. The simulation results thus warrant the conclusion that partisan considerations predominated over other non-partisan criteria, particularly minimizing county splits and maximizing compactness, in the drawing of the General Assembly's enacted plan.

Having found that partisan considerations predominated over the General Assembly's drawing of its enacted plan, I then consider a series of possible alternative explanations for the extreme partisan bias in the enacted plan. The Adopted Criteria calls for the drawing of congressional districts in a manner that avoids double-pairing of any of the incumbent members of Congress. I thus conduct a second set of 1,000 simulations to see if following this mandate would somehow alter the partisan composition of valid districting plans.

This second set of simulation results demonstrates that the Adopted Criteria's provision for protecting House incumbents does not explain the extreme partisan bias of the enacted plan. Among the 1,000 simulated plans protecting all 13 of North Carolina's House incumbents, not a single simulation creates 10 Republican-leaning districts; once again, most of the simulations contain either 7 or 8 Republican districts. These simulation results clearly reject any notion that an effort to protect incumbents might have warranted the extreme partisan bias observed in the General Assembly's enacted plan. I also found that the enacted plan did not succeed entirely in protecting incumbents, as two congressional incumbents were in fact paired under the enacted plan.

Additionally, even though the enacted plan failed to fully minimize county splits and protect incumbents, I evaluated whether the General Assembly's specific decision to split 13 counties and to protect exactly 11 incumbent House members under the enacted plan could have possibly explained the extreme partisan bias of the plan. Hence, I conducted a third set of 1,000 simulations in which the computer intentionally split 13 counties and protected only 11 incumbents, while otherwise optimizing on the other non-partisan criteria set forth in the Adopted Criteria. Once again, the simulation results demonstrate that even with these particular benchmarks for county splits and protected incumbents, a non-partisan simulated districting process never achieves the outcome of 10 Republican districts that is produced by the enacted plan. Hence, the drawing of the enacted SB 2 plan can only be explained as a process in which

partisan goals were predominant and subordinated the non-partisan, traditional districting criteria included in the Adopted Criteria.

This report proceeds as follows. First, I explain the logic of using computer-generated districting simulations to evaluate the partisan bias of a districting plan. I then present three sets of computer simulations of valid districting plans, as described above. Next, I explain how the results of these districting simulations demonstrate that partisan concerns predominated significantly over other factors in the drawing of the General Assembly's enacted map. Finally, I present additional robustness checks of my calculations of the enacted and simulated plans' partisanship using alternative measures of partisan electoral bias.

The Logic of Redistricting Simulations

Once a districting plan has been drawn, academics and judges face a difficult challenge in assessing the intent of the map-drawers, especially regarding partisan motivations. The central problem is that the mere presence of partisan bias may tell us very little about the intentions of those drawing the districts. Whenever political representation is based on winner-take-all districts, asymmetries between votes and seats can emerge merely because one party's supporters are more clustered in space than those of the other party. When this happens, the party with a more concentrated support base achieves a smaller seat share because it racks up large numbers of "surplus" votes in the districts it wins, while falling just short of the winning threshold in many of the districts it loses. This can happen quite naturally in cities due to such factors as racial segregation, housing and labor markets, transportation infrastructure, and residential sorting by income and lifestyle.

When tallying votes in recent statewide races such as those for U.S. President, U.S. Senator, or Governor, it is clear that North Carolina's statewide electorate is roughly evenly divided between Democratic and Republican voters. Yet Republicans currently hold a very significant 10-3 advantage over Democrats in control over North Carolina's U.S. congressional seats.

The crucial question is whether, due to underlying patterns of political geography, the distribution of partisan outcomes created by the General Assembly's enacted districting plan could have plausibly emerged from a non-partisan districting process. In order to make informed and precise inferences about the presence or absence of partisan intent during the redistricting

process, it is necessary to compare the General Assembly's enacted districting plan against a standard that is based on a non-partisan districting process following the traditional redistricting criteria outlined in the Adopted Criteria.

The computer simulations I conducted for this report have been created expressly for the purpose of developing such a standard. Conducting computer simulations of the districting process is the most statistically accurate strategy for generating a baseline against which to compare an enacted districting plan, such as the SB 2 plan. The computer simulation process leaves aside any data about partisanship or demographic characteristics other than population counts, and the computer algorithm generates complete and legally compliant districting plans based purely on the traditional districting criteria outlined in the Adopted Criteria.

After a simulated districting map has been created in complete ignorance of partisanship, I then overlay past results from recent elections, sum them over the simulated districts, and then calculate the number of seats that would be won by Democrats and Republicans under this districting plan, using two different sets of political data to measure partisan performance. Instead of generating only one such plan, the algorithm allows for the generation of thousands of such plans. Each plan combines North Carolina's census blocks together in a different way, but always in compliance with the non-partisan portion of the Adopted Criteria. The simulations thus produce a large distribution of valid non-partisan districting plans. For each simulated plan, I sum up recent past election results across the 13 districts and calculate the number of seats that would have been won by Democrats and Republicans.

I also perform the same calculations for the enacted SB 2 plan drawn by the General Assembly. One should expect that if the SB 2 plan had been drawn without partisanship as its predominant consideration, the enacted plan's partisan breakdown of seats will fall somewhere roughly within the normal range of the distribution of simulated, valid non-partisan plans. If the plan produced by the legislature is far in the tail of the distribution, or lies outside the distribution altogether—meaning that it favors one party more than the vast majority or all of the simulated plans—then such a finding provides strong indication that the enacted plan was drawn with an overriding partisan intent to favor that political party, rather than to follow non-partisan, traditional districting criteria.

By randomly drawing districting plans with a process designed to optimize on traditional districting criteria, the computer simulation process thus gives us a precise indication of the

range of districting plans that plausibly and likely emerge when map-drawers are not motivated primarily by partisan goals. By comparing the enacted plans against the range of simulated plans with respect to various partisan measurements, I am able to precisely determine the extent to which a map-drawer's deviations from traditional districting criteria, such as geographic compactness and county splits, was motivated by partisan goals.

In simulating plans for North Carolina's congressional districts, the computer algorithm follows five traditional districting criteria, all of which are mandated by the Adopted Criteria.

1) *Population Equality*: North Carolina's 2010 Census population was 9,535,483, so districts in the 13-member plan have an ideal population of 733,498.7. Specifically, then, the computer simulation algorithm is designed to populate each districting plan such that precisely nine districts have a population of 733,499, while the remaining four districts have a population of 733,498.

2) *Contiguity*: The computer simulations require districts to be geographically contiguous. As described in the Adopted Criteria, water contiguity is permissible.

3) *Minimizing County Splits*: The simulation process attempts to avoid splitting any of North Carolina's 100 counties, except when doing so is necessary to avoid violating one of the aforementioned criteria. Furthermore, as mandated by the Adopted Criteria, the computer always avoids splitting a county into more than two simulated districts. In practice, the simulation process is able to always create valid districting plans by splitting only 12 counties, in contrast to the 13 counties split by the enacted SB 2 plan.

4) *Minimizing VTD Splits*: North Carolina is divided into 2,692 VTDs. The computer simulation algorithm attempts to keep these VTDs intact and not split them into multiple districts, except when doing so is necessary for creating equally-populated districts. In practice, the simulated plans always split either 11 or 12 VTDs into two districts.

5) *Geographic Compactness*: The simulation algorithm prioritizes the drawing of geographically compact districts whenever doing so does not violate any of the aforementioned criteria. After completing the computer simulations, I then compare the compactness of the simulated plans and the enacted plans using two different measures:

First, I calculate the average Reock score of the districts within each plan. The Reock score for each individual district is calculated as the ratio of the district's area to the area of the smallest bounding circle that can be drawn to completely contain the district. The General

Assembly's enacted districting plan has an average Reock score of 0.3373 across its 13 districts. As described later, the computer simulation process is able to always generate plans that are significantly more compact than the enacted SB 2 plan, as measured by average Reock score.

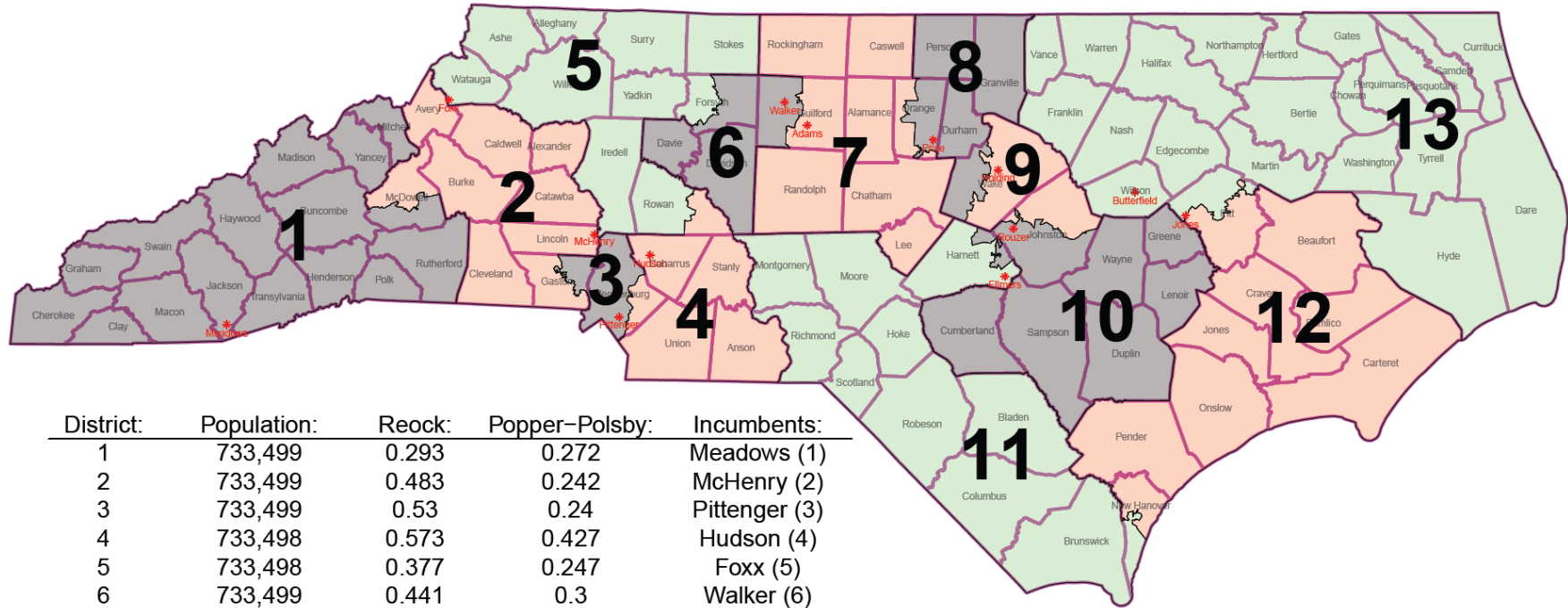
Second, I calculate the average Popper-Polsby score of each plan's districts. The Popper-Polsby score for each individual district is calculated as the ratio of the district's area to the area of a hypothetical circle whose circumference is identical to the length of the district's perimeter. The General Assembly's enacted districting plan has an average Popper-Polsby score of 0.2418 across its 13 districts. As described later, the computer simulation process is able to always generate plans that are significantly more compact than the enacted SB 2 plan, as measured by average Popper-Polsby score.

Beyond these five traditional districting criteria, the Adopted Criteria also call for the congressional plan to protect incumbents by requiring "reasonable efforts...to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts constructed." Although such incumbency protection may not be explicitly partisan, this criterion may nevertheless potentially cause indirect partisan electoral consequences. Thus, I address this criterion in two ways: One set of 1,000 simulations pays no attention to the protection of incumbents, while a second, separate set of 1,000 simulations deliberately protects incumbents by assigning each of North Carolina's 13 incumbents from the 114th Congress to a separate district with no pairing of incumbents. I then evaluate these two sets of simulations separately.

Figure 1 illustrates an example of one of the simulated districting plans produced by this computer algorithm. The simulated map in Figure 1 was produced within this second set of simulations, in which the computer sought to adhere as closely as possible to the non-partisan traditional criteria in the Adopted Criteria. Thus, it was able to split fewer counties, protect more incumbents, and draw significantly more geographically compact districts than the enacted SB 2 plan.

Figure 1:

**Example of a Computer-Simulated Districting Plan
Drawn to Optimize Geographic Compactness and Protect All 13 Incumbents**



District:	Population:	Reock:	Popper-Polsby:	Incumbents:
1	733,499	0.293	0.272	Meadows (1)
2	733,499	0.483	0.242	McHenry (2)
3	733,499	0.53	0.24	Pittenger (3)
4	733,498	0.573	0.427	Hudson (4)
5	733,498	0.377	0.247	Foxx (5)
6	733,499	0.441	0.3	Walker (6)
7	733,499	0.547	0.345	Adams (7)
8	733,498	0.467	0.259	Price (8)
9	733,499	0.43	0.243	Holding (9)
10	733,499	0.451	0.243	Rouzer (10)
11	733,499	0.273	0.2	Ellmers (11)
12	733,499	0.39	0.263	Jones (12)
13	733,498	0.357	0.41	Butterfield (13)
Plan Average:	733,498.7	0.432	0.284	

12 Split Counties:	12 Split VTD's:
Forsyth (Districts 5 and 6)	37111GLENWD
Gaston (Districts 2 and 3)	3707141
Guilford (Districts 6 and 7)	37119045
Harnett (Districts 10 and 11)	3715913
Johnston (Districts 10 and 9)	37067052
McDowell (Districts 1 and 2)	37081G26
Mecklenburg (Districts 3 and 4)	37135SJ
New Hanover (Districts 11 and 12)	3718308-05
Orange (Districts 7 and 8)	37101PR12
Pitt (Districts 12 and 13)	37085PR24
Rowan (Districts 4 and 5)	37129W18
Wake (Districts 8 and 9)	371470501

Measuring the Partisanship of Districting Plans

I use two different sets of political data to measure the partisan performance of the simulated and enacted districting plans in this report. Each of these two measures enables me to calculate the number of Republican and Democratic-leaning districts within each plan, thus allowing me to determine whether or not the partisan distribution of seats in the enacted plan could reasonably have arisen from a districting process respecting the various traditional criteria set forth in the Adopted Criteria.

The Hofeller Formula: Attorneys for the plaintiffs shared with me a document which describes in detail the formula for measuring voter partisanship employed by Tom Hofeller, whom plaintiffs' counsel described as being involved in the General Assembly's drawing of the SB 2 plan. The Hofeller formula describes the partisanship of any given constituency of North Carolina voters by aggregating together, with equal weights, the partisan results from seven recent elections: The 2008 Gubernatorial, US Senate, and Commissioner of Insurance elections; the 2010 US Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 US Senate election.

Applying the Hofeller formula to the SB 2 districting plan reveals that the enacted plan contained 10 Republican-majority districts and 3 Democratic-leaning districts. Throughout this report, I also apply the Hofeller formula to all simulated districting plans, allowing for a direct comparison of the partisanship of the enacted and the simulated districting plans.

The Adopted Criteria Elections: The Joint Select Committee's Adopted Criteria state that when evaluating the political composition of congressional districts, the General Assembly shall consider "election results in statewide contests since January 1, 2008, not including the last two presidential contests." Since this set of elections is significantly broader than the election results considered in the Hofeller formula, I use this broader set of elections as a second measure for evaluating the partisanship of the enacted and simulated districts in this report.

Specifically, I evaluate districts by counting up the total number of Republican and Democratic votes cast in the 20 statewide, non-presidential elections held from November 2008 to November 2014, as described by the Adopted Criteria. Much like the Hofeller formula, I weight each election equally and count whether each district contains more Republican than Democratic voters, aggregated over all 20 elections. I find that, using the results of these 20 elections, total Republican voters outnumbered total Democratic voters in 10 of 13 districts in

the enacted plan. Throughout this report, I apply the same formula for evaluating all of the simulated plans, allowing for yet another direct comparison of the partisanship of the enacted and the simulated districting plans.

Simulation Set 1:

Optimizing on Traditional Districting Criteria with No Incumbent Protection

I conducted a first set of 1,000 computer simulations in which plans were drawn to optimize on the five non-partisan, traditional districting criteria described previously: population equality, contiguity, minimizing county splits, minimizing VTD splits, and geographic compactness. Table 1 details how the simulated plans perform with respect to these various districting criteria.

Figure 2 compares the partisan breakdown of the simulated plans to the partisanship of the enacted SB 2 plan. The left diagram in Figure 2 illustrates the number of Republican-leaning districts created by the 1,000 simulated plans, while the right diagram illustrates the same quantity using the 20 statewide elections described in the Adopted Criteria. Applying the Hofeller formula (left diagram in Figure 2), the simulated plans all create from 5 to 9 Republican districts out of 13 total districts. Moreover, the vast majority of simulations create 6, 7, or 8 Republican districts; even 9 Republican districts are created in only 1% of the simulations. Hence, the enacted SB 2 plan's creation of 10 Republican districts is an extreme statistical outlier, as it is an outcome never achieved by a single one of the 1,000 simulations. We are thus able to conclude with overwhelmingly high statistical certainty that the enacted plan created a pro-Republican partisan outcome that would never have been possible under a districting process adhering to the non-partisan traditional criteria mandated by the Adopted Criteria.

Analysis of the simulations and the enacted plan using the 20 statewide elections (right diagram in Figure 2) yields similarly strong conclusions. The enacted plan creates 10 districts in which Republican votes outnumbered Democratic votes across these 20 statewide elections. Yet the simulated plans all create only 3 to 8 Republican-leaning districts, with most simulations resulting in 5, 6, or 7 Republican districts. Hence, it is clear that not only is the enacted plan an extreme partisan outlier when compared to valid, computer-simulated districting plans, but the net effect of the enacted plan's partisan efforts was the creation of at least 2 or 3 additional

Republican seats beyond what would normally have been achievable under a non-partisan, legally complaint districting process.

Did the enacted SB 2 plan comply with the non-partisan districting criteria mandated by the Adopted Criteria? Once again, the computer simulations are illuminating because they offer insight into the type and range of plans that would have emerged had reasonable efforts been made to adhere to the Adopted Criteria. First, as detailed in Table 1, each of the 1,000 simulated plans in this first set splits 12 counties; hence, it is clear that drawing a valid plan with only 12 counties split can be easily accomplished without difficulty and without sacrificing other non-partisan districting criteria, such as equal population. By contrast, the enacted SB 2 plan split 13 counties, thus falling short of the 12-county benchmark that the computer simulations found to be very reasonably attainable in all 1,000 of the simulated plans. Hence, it is clear that the SB 2 plan failed to adhere to the Adopted Criteria's mandate of reasonably minimizing split counties.

Did the enacted plan make reasonable efforts to draw compact districts? In Figure 3, the left diagram illustrates the compactness of the 1,000 simulated plans, compared against the compactness of the enacted SB 2 plan. In this diagram, the horizontal axis depicts the average Reock score of the districts within each plan, while the vertical axis depicts the average Popper-Polsby score. Each black circle in this diagram represents one of the 1,000 simulated plans, while the red star denotes the enacted SB 2 plan. Figure 3 illustrates that all of the simulated plans are more geographically compact than the SB 2 plan, as measured both by average Reock and average Popper-Polsby scores. Hence, it is clear that the SB 2 plan did not seek to draw districts that were as geographically compact as reasonably possible.

Why did the enacted SB 2 plan fall short of the Adopted Criteria's mandates on geographic compactness and minimizing county splits? As the right diagram in Figure 3 illustrates, the SB 2 plan was entirely outside the range of the simulated maps with respect to both geographic compactness and the partisan distribution of seats, in addition to splitting one additional county than was necessary. Collectively, these findings suggest that the SB 2 plan was drawn under a process in which a partisan goal – the creation of 10 Republican districts – predominated over adherence to traditional districting criteria. The predominance of this extreme partisan goal thus subordinated the two non-partisan, traditional districting considerations of minimizing county splits and achieving geographic compactness.

Table 1: Summary of Three Sets of Simulated Districting Plans and Enacted SB 2 Plan

	Senate Bill 2:	Simulation Set 1:	Simulation Set 2:	Simulation Set 3:
Description:	General Assembly's Enacted Plan	Simulated maps only follow traditional districting criteria	Maps protect all 13 incumbents and otherwise follow traditional districting criteria	Maps intentionally match SB 2 plan on 13 county splits and 11 protected incumbents
Total Number of Simulated Plans:		1,000 simulations	1,000 simulations	1,000 simulations
Number of Split Counties:	13	12 (1,000 simulations)	12 (1,000 simulations)	13 (1,000 simulations)
Number of Split VTDs:	12	12 (1,000 simulations)	12 (1,000 simulations)	12 (1,000 simulations)
Incumbents Protected:	11	2 to 11	13 (1,000 simulations)	11 (1,000 simulations)
Average Reock Score (Compactness):	0.3373	0.372 to 0.480	0.371 to 0.466	0.347 to 0.453
Average Popper-Polsby Score (Compactness):	0.2418	0.253 to 0.332	0.250 to 0.316	0.244 to 0.313
Number of Republican Districts (Hofeller Formula):	10	5 (32 simulations) 6 (324 simulations) 7 (456 simulations) 8 (177 simulations) 9 (11 simulations)	5 (9 simulations) 6 (194 simulations) 7 (529 simulations) 8 (258 simulations) 9 (10 simulations)	4 (1 simulation) 5 (33 simulations) 6 (267 simulations) 7 (530 simulations) 8 (160 simulations) 9 (9 simulations)

Figure 2:

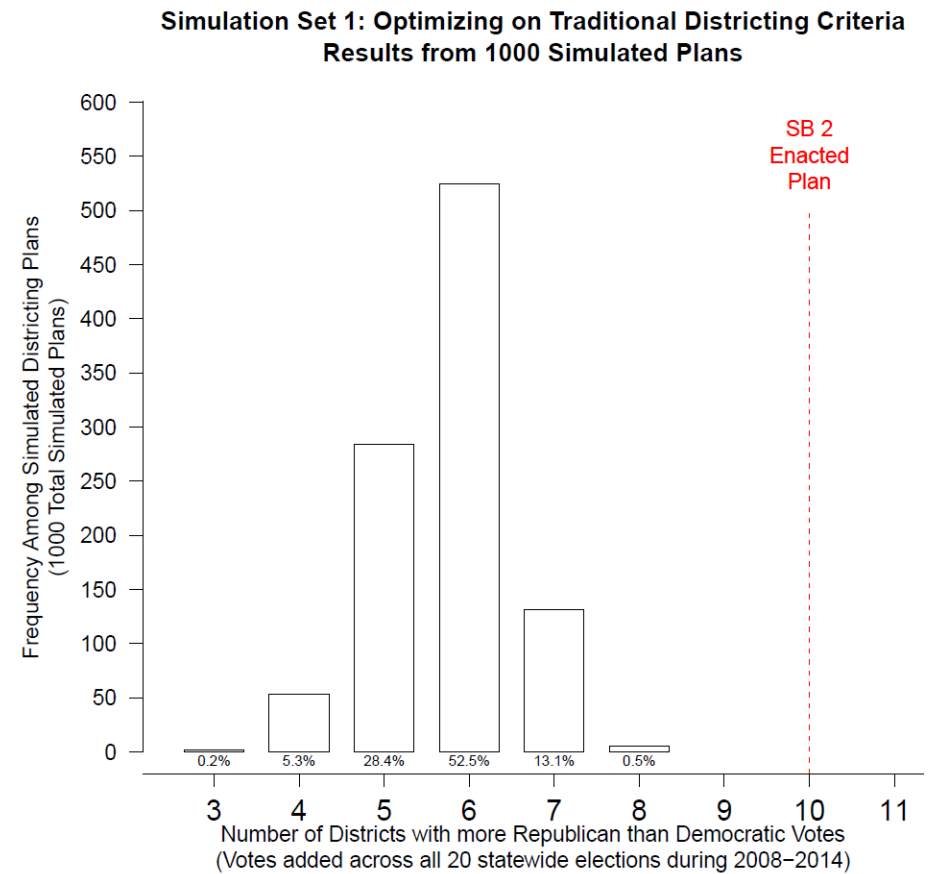
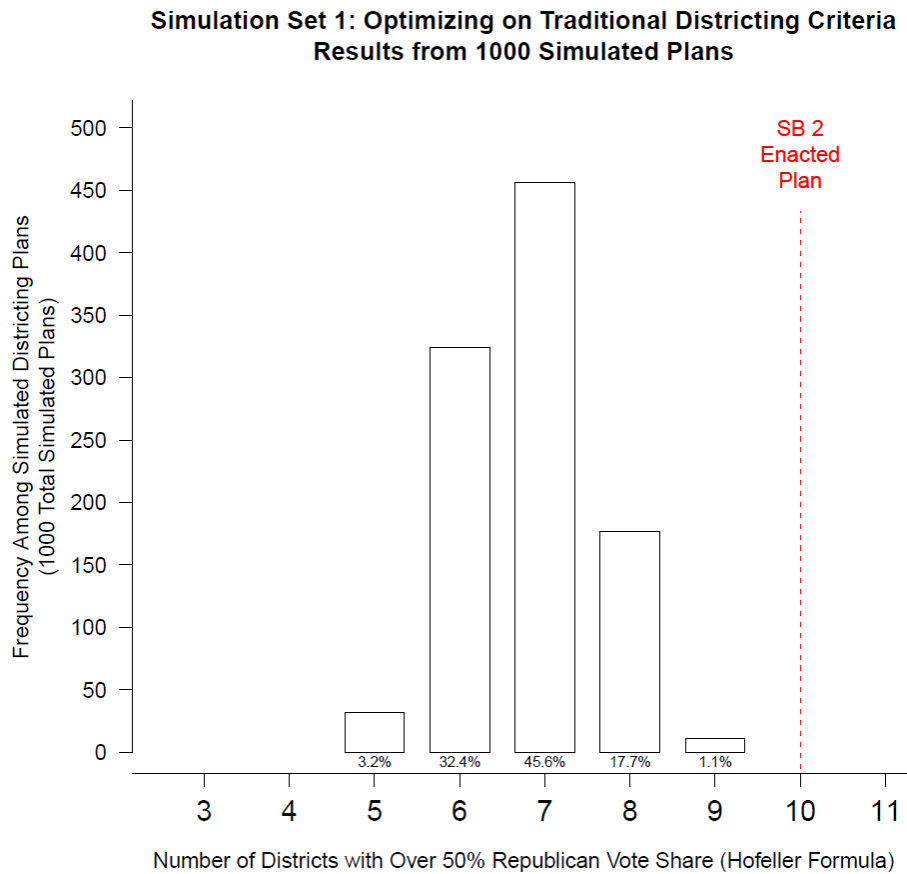
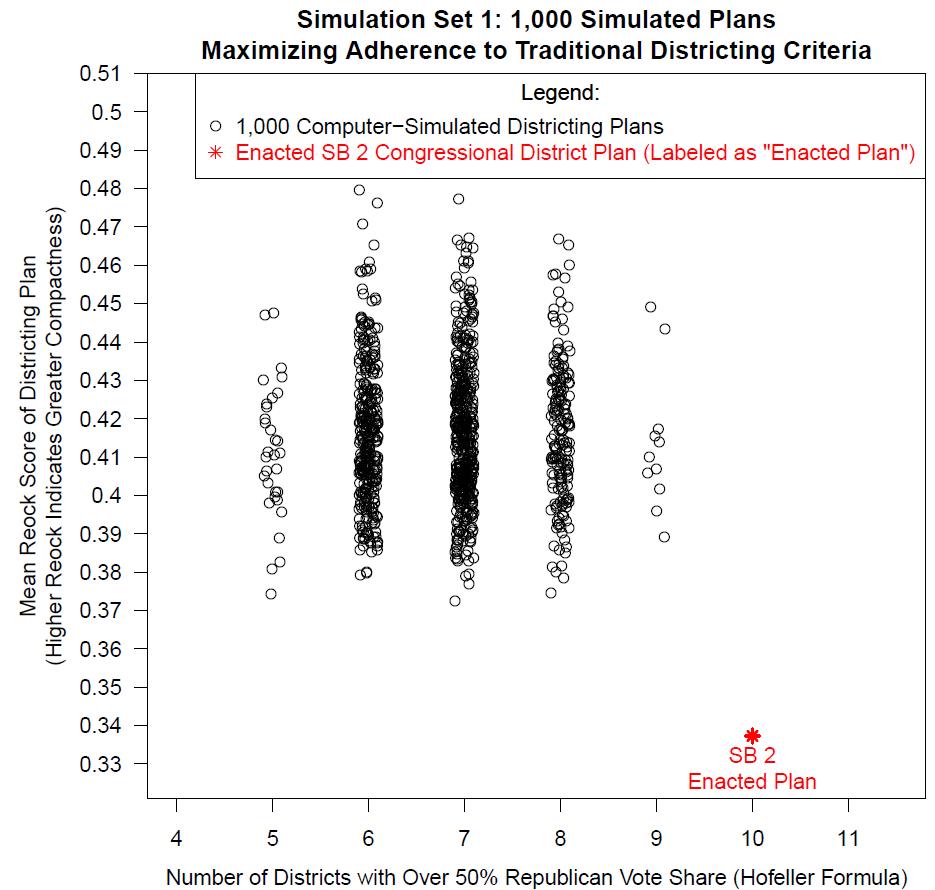
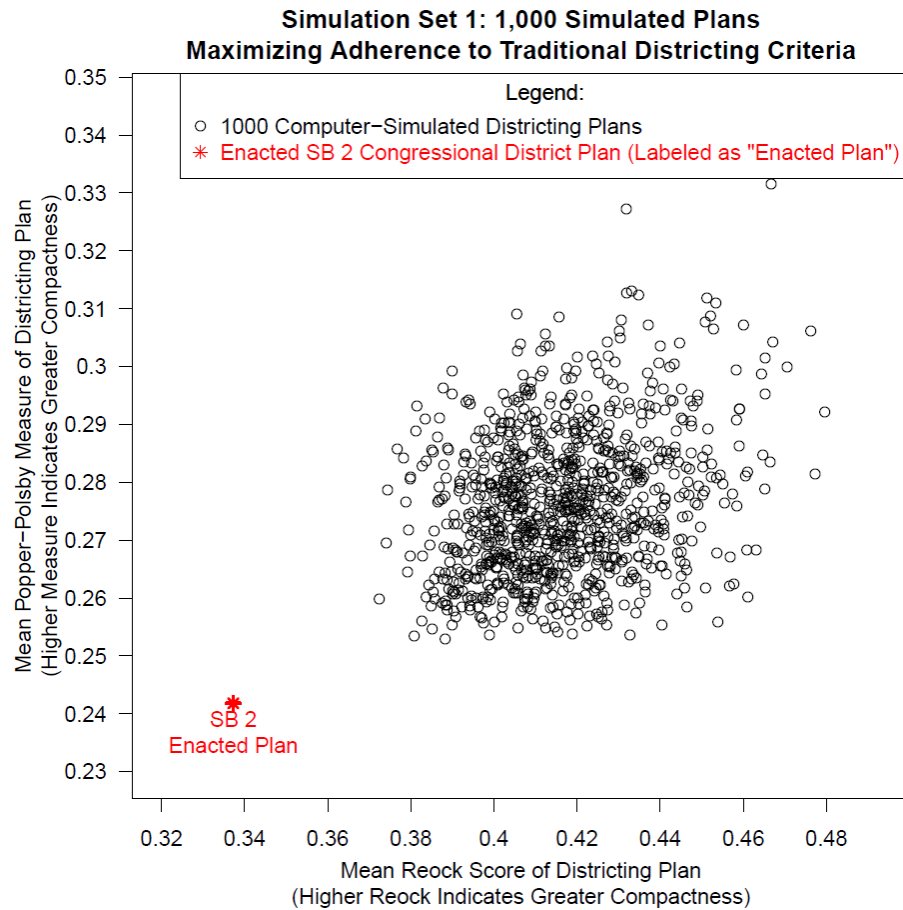


Figure 3:



Simulation Set 2: Maximizing the Protection of Incumbents

The first set of 1,000 simulations ignored any considerations regarding the protection of incumbent House members or the pairing of incumbents within the same district. I initially ignored this portion of the Adopted Criteria because even though incumbency protection is not an overtly partisan goal, the protection of North Carolina's 13 incumbents as of November 2016 could have indirect partisan electoral consequences.

Ten of North Carolina's thirteen incumbents in November 2016 were Republicans. These incumbents were elected from the previously partisan-gerrymandered 2011 congressional districting map. Thus, making efforts to place each of the 13 incumbents into separate districts would, in general, encourage the drawing of a plan with districts that geographically overlap with and share borders similar to the districts from the previous 2011 plan. In this sense, attempts to protect incumbents in the new congressional plan could indirectly distort the partisan distribution of voters across districts. Hence, I conducted the first set of simulations with no efforts at incumbency protection in order to analyze the range of plans that could emerge from strict adherence to the apolitical portion of the Adopted Criteria.

Moreover, I analyzed the SB 2 plan and found that the enacted congressional districts do not protect all 13 of North Carolina's incumbents as of the November 2014 election. Eleven of the 13 incumbents are placed into separate districts, but the remaining two incumbents – David Price (Democrat) and George Holding (Republican) – are paired into a single district. This particular outcome of protecting only 11 of 13 incumbents was within the range observed among the first 1,000 of computer-simulated plans. Thus, I did not detect any extreme efforts by the General Assembly to protect incumbents at the expense of other traditional districting criteria.

Figure 4:

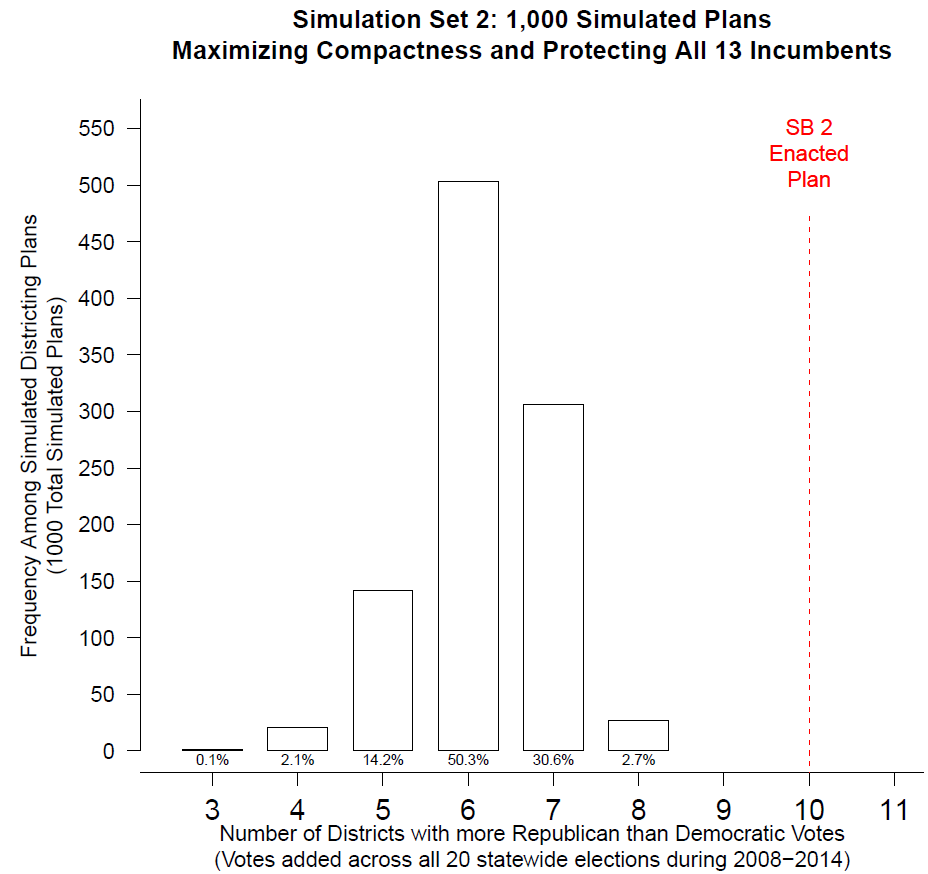
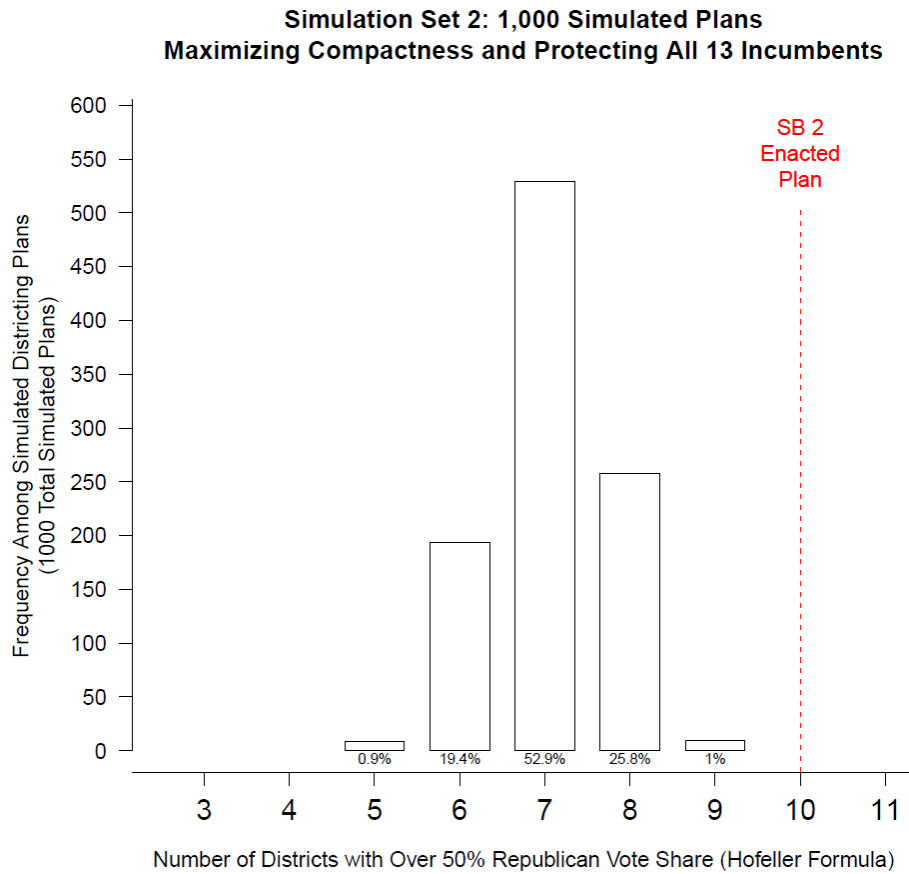
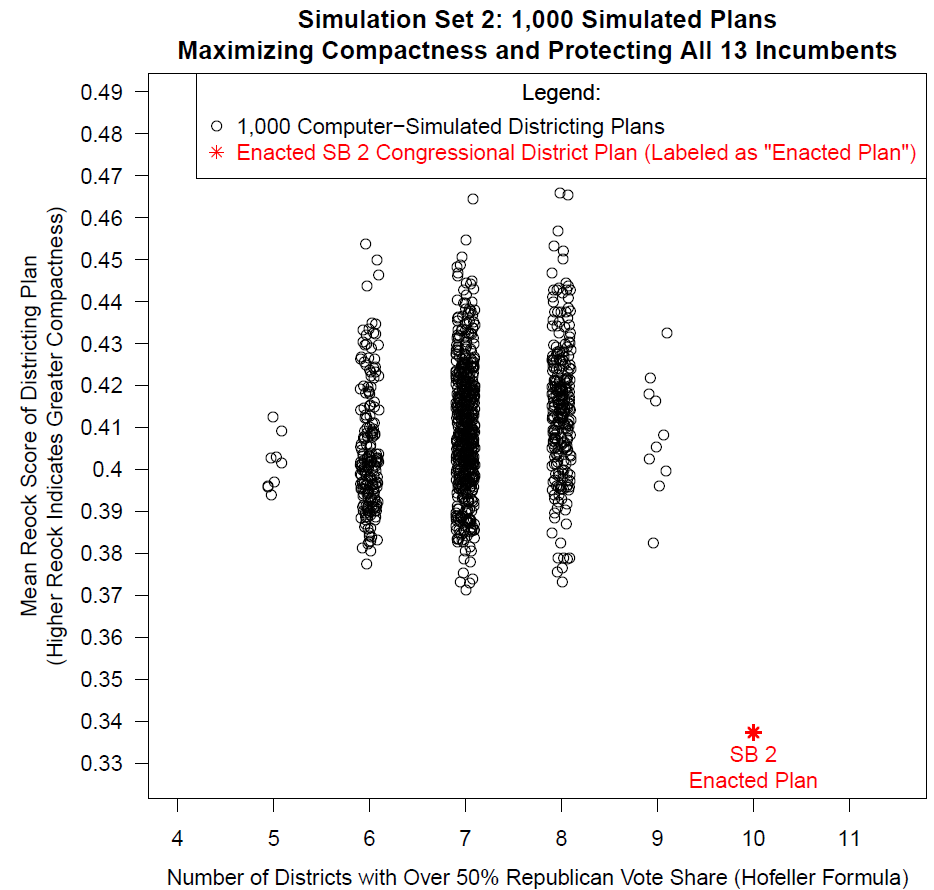
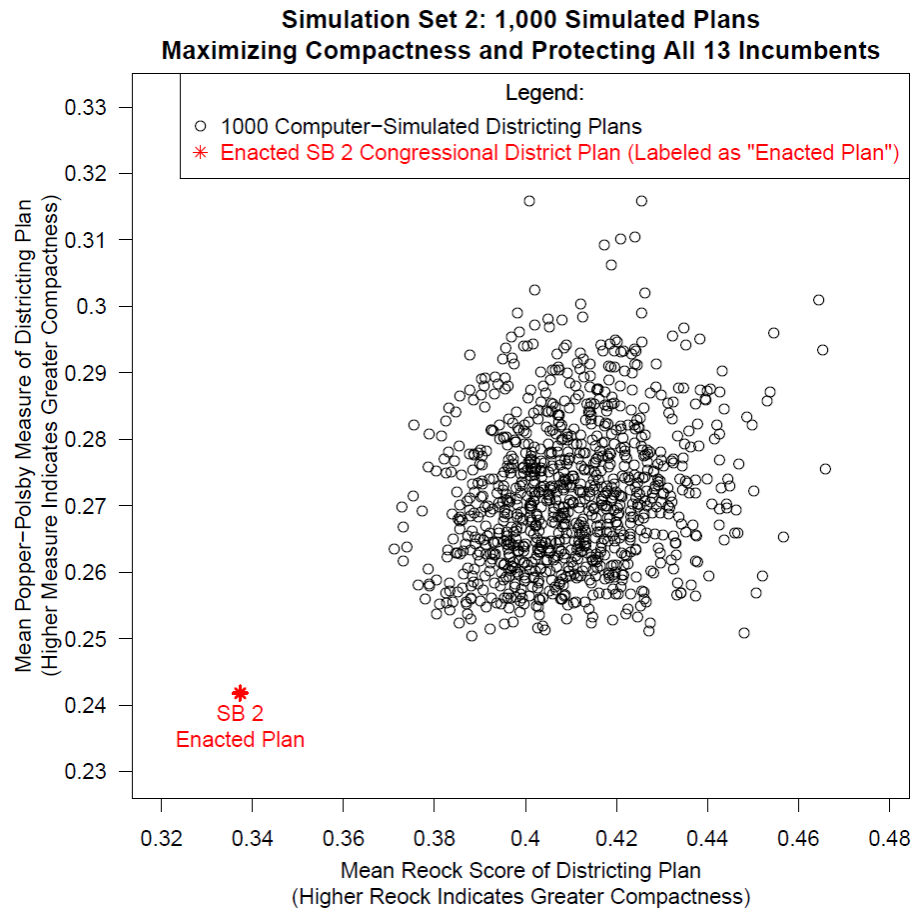


Figure 5:



Nevertheless, it is worth exploring whether reasonable efforts *could* have been made to avoid pairing any of the 13 incumbent House members, and whether such efforts could somehow be a valid explanation for the extreme outcome of creating a 10-3 Republican advantage in North Carolina's congressional districts. To answer these questions, I conducted a second, separate set of 1,000 simulations in which the computer algorithm was programmed to intentionally guarantee that each of the 13 incumbents resided in a separate district, thus avoiding any pairing of incumbents. Beyond this intentional incumbent protection, the simulation procedure otherwise prioritized the same five non-partisan traditional districting criteria followed in the first set of simulations and ignored other political considerations.

Descriptions of this second set of 1,000 simulated congressional plans appear in the third column of Table 1. All 1,000 of these simulated plans were able to separate all 13 of the incumbents into 13 separate districts, thus avoiding pairing any incumbents. Moreover, this complete level of incumbency protection was achieved without any increase in the number of split counties or VTDs and with only slight decreases in the geographic compactness of the simulated districts. As illustrated in Figure 5, all 1,000 of the simulations in this second set are still significantly more compact than the enacted SB 2 plan on both the Reock and Popper-Polsby measures. Hence, these simulation results suggest that the Adopted Criteria mandate of not pairing multiple incumbents in districts can be achieved with very reasonable effort and without noticeably subordinating any of the non-partisan traditional districting criteria listed in the Adopted Criteria.

Does the protection of all 13 House incumbents make the creation of a 10-3 Republican advantage in the congressional districting plan a plausible outcome? Figure 4 illustrates the distribution of partisan seats across the 1,000 simulated plans, with partisanship measured using the Hofeller formula (left diagram of Figure 4) and using the 20 elections specified in the Adopted Criteria (right diagram). This Figure illustrates that the partisan distribution of seats under these simulations is nearly identical to the first set of simulations, which ignored incumbency protection. When all 13 incumbents are protected in separate districts, the simulation procedure almost always produces a plan with 6, 7, or 8 Republican districts, as measured by the Hofeller formula. The enacted plan's creation of 10 Republican districts is an outcome never achieved in a single one of the 1,000 simulations. Hence, we are able to conclude with overwhelmingly high statistical certainty that even the strictest adherence to the Adopted

Criteria's mandate of protecting incumbents, combined with adherence to the other non-partisan portions of the Adopted Criteria, would not explain the creation of a congressional map with a 10-3 Republican advantage.

Simulation Set 3:

Matching the Enacted Plan's County Splits and Protected Incumbents

The first two sets of simulations thus far have intentionally produced districting maps optimized for adherence to various requirements specified in the Adopted Criteria. However, the General Assembly's enacted SB 2 plan failed to adhere quite as strictly to these various criteria, splitting 13 counties instead of 12 achieved in the simulations and protecting only 11 incumbents rather than 13.

Hence, one might wonder whether the General Assembly's choice to draw a less-than-optimal plan with respect to these two criteria might somehow account for the creation of a 10-3 Republican advantage in the partisan control of districts. To address this possibility, I conduct a third set of 1,000 simulations in which the computer algorithm is instructed to specifically match, but not exceed, the enacted plan's achievement of 13 county splits and 11 protected incumbents. Beyond these two criteria, the simulation algorithm otherwise seeks to achieve optimal compliance with respect to all of the other traditional districting criteria described earlier, including minimizing VTD splits and maximizing geographic compactness.

If the General Assembly's choice to split exactly 13 counties and protect exactly 11 incumbents were the cause of the enacted plan's pro-Republican partisan advantage, then we would expect that a partisan-neutral districting algorithm requiring 13 split counties and 11 protected incumbents would also sometimes create a similar level of Republican partisan advantage. If such a districting algorithm does not frequently create plans similar level of Republican partisan advantage, then we may reject the notion that the General Assembly's specific goals with respect to county splits and protected incumbents was responsible for the extreme pro-Republican partisanship of the enacted plan. As noted previously, the enacted plan achieves suboptimal level of incumbency protection and county preservation, as the first two set of simulations in this report demonstrate that splitting as few as 12 counties and protecting all 13 incumbents is quite easily achievable while still drawing a more compact plan than the SB 2 plan. Hence, the purpose of this set of simulations is to determine whether we can accept or

reject the possibility that the unusual partisan performance of the enacted plan can somehow be attributed to the plan's failure to fully minimize county splits and maximize incumbency protection.

The fourth column of Table 1 presents descriptions of this third set of 1,000 simulated congressional plans. All 1,000 of these simulated plans were able to split exactly 13 counties and protect exactly 11 incumbents, thus matching the enacted SB 2 plan on these criteria. Figure 7 illustrates the geographic compactness of this third set of simulated plans, showing that the intentional splitting of a 13th county comes at only a minimal cost to overall plan compactness.

Does the unique combination of splitting 13 counties and protecting 11 incumbents explain the creation of a plan with 10 Republican districts? The simulation results displayed in Figure 6 clearly reject this notion. This set of simulated districting plans contain anywhere from 4 to 9 Republican districts, and the simulated plans most commonly contain 6, 7, or 8 Republican districts, as measured by the Hofeller formula. Hence, it is clear that merely an effort to create a map with 13 county splits and 11 protected incumbents alone would not naturally result in a plan with a 10-3 Republican partisan advantage. Instead, the simulation results demonstrate that a 10-3 Republican advantage could have resulted only from a deliberate attempt to draw a map with partisan advantage as the predominant goal.

Furthermore, as the Reock compactness measurements in Figure 7 illustrate, such a deliberate attempt would have also required the subordination of district compactness, in addition to splitting more counties and protecting fewer incumbents than was reasonably possible. The diagrams in Figure 7 illustrate that all 1,000 of the simulations in this set, which matched the enacted plan's splitting of 13 counties and protection of 11 incumbents, were significantly more geographically compact than the enacted plan. Together, these findings demonstrate that none of the enacted plan's unique characteristics with respect to non-partisan districting criteria could have justified the plan's creation of a 10-3 Republican advantage. Instead, such an extreme level of pro-Republican advantage in congressional seats could not have emerged from following these districting criteria, if not for the General Assembly's explicit pursuit of Republican partisan advantage.

Figure 6:

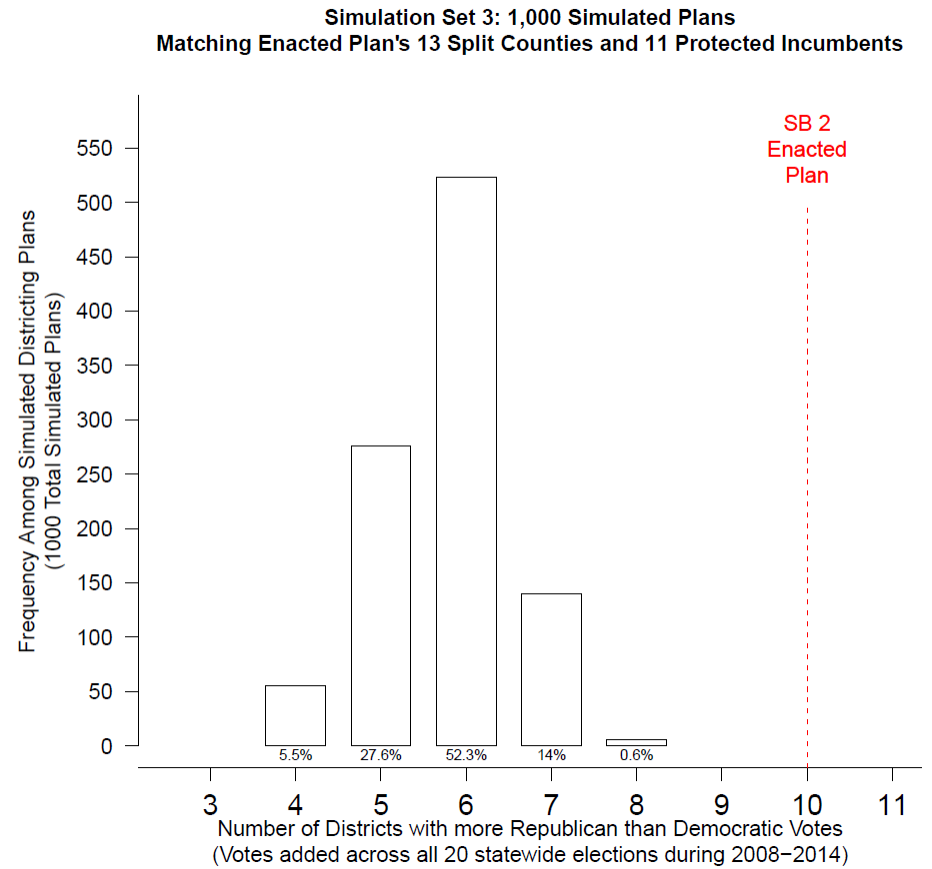
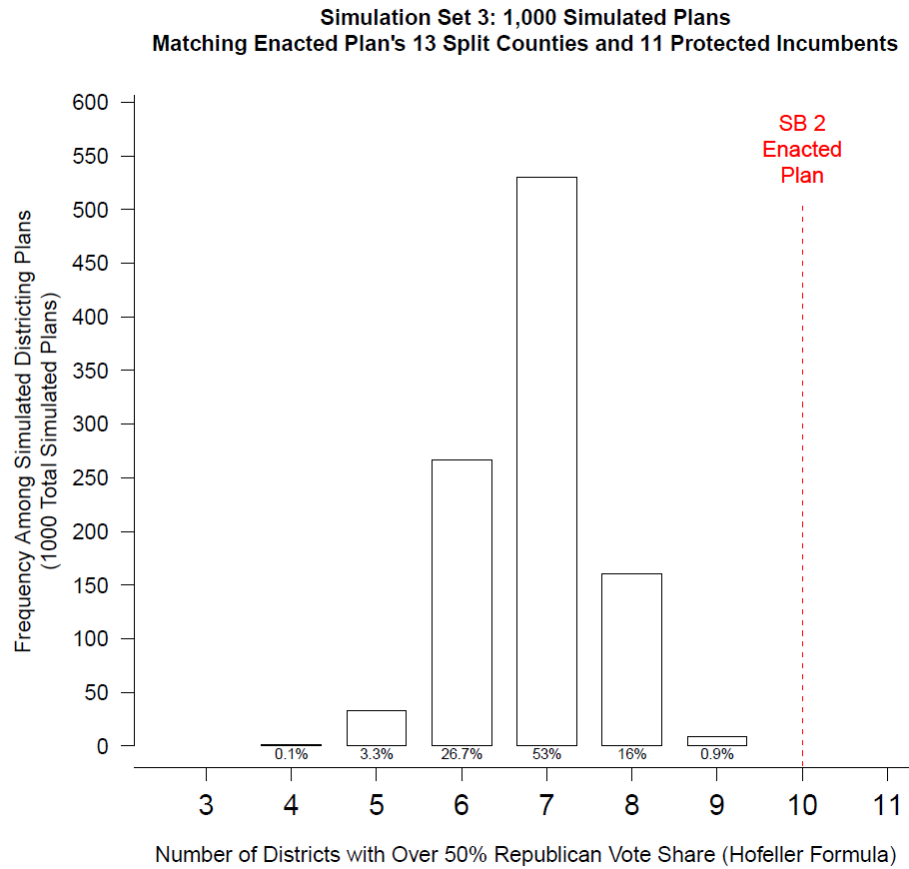
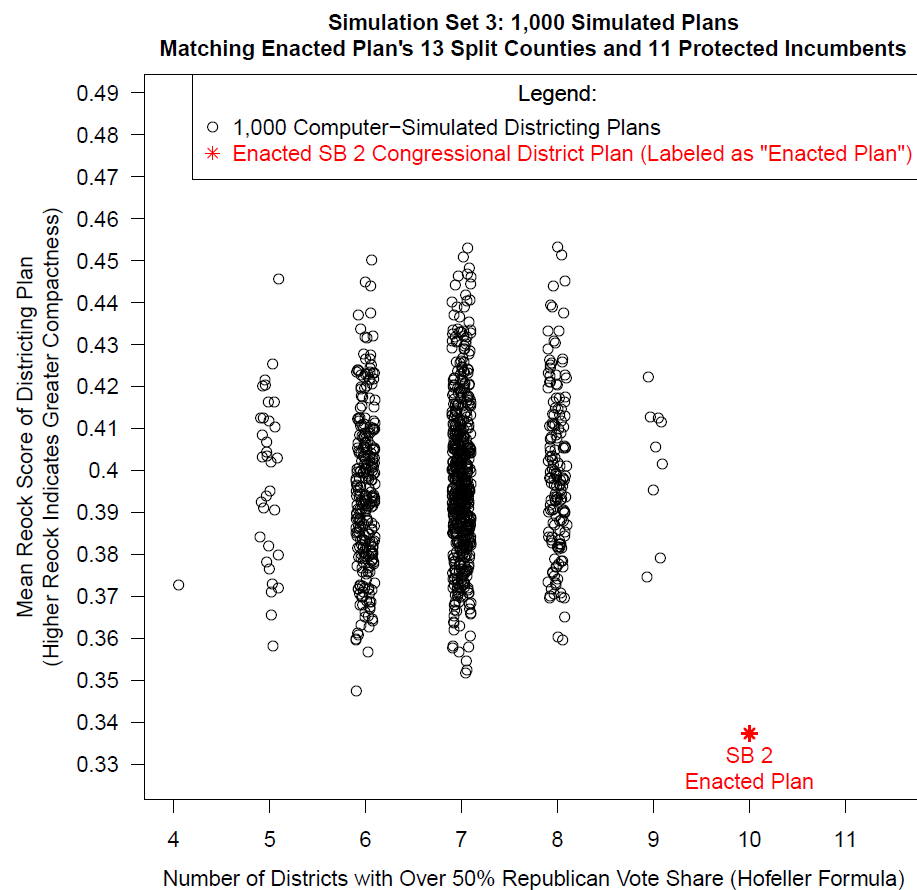
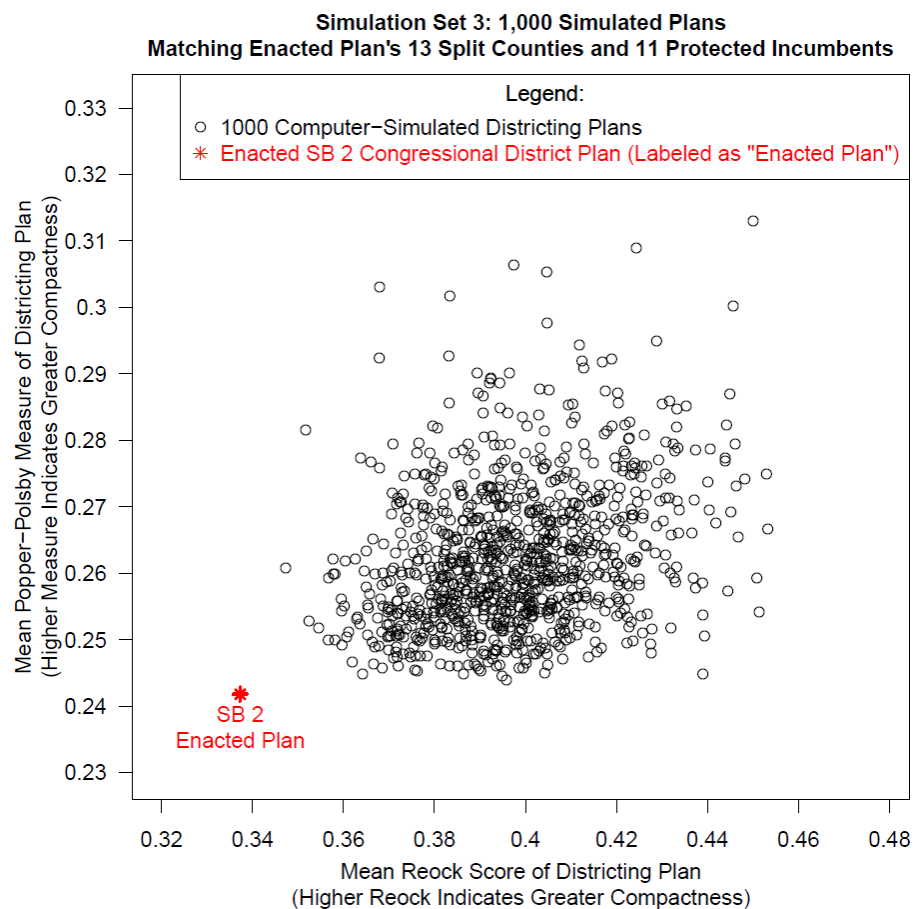


Figure 7:



Robustness Checks Using Alternative Measures of Partisanship

The previous section of this report has laid out the main simulation analysis and comprehensive, statistically valid measures of the partisanship of the simulated and enacted districting plans. In particular, the Hofeller formula and the 20 elections from 2008-2014 identified in the Adopted Criteria are broad, durable, and sufficient measurements of districting plan partisanship, particularly given that these measurements represent the General Assembly's actual and stated efforts to measure the partisanship of constituencies in North Carolina.

What follows in the remainder of the report, then, is a completely separate set of analyses in which I examine the simulated plans and the enacted SB 2 plan using alternative measures of partisanship and electoral bias that other scholars of redistricting have proposed. These alternative measures are presented as robustness checks, and the conclusions reached in the previous sections do not depend on these robustness checks. Nevertheless, I introduce these alternative measures of districting plan partisanship in order to illustrate the findings of my simulation analysis in more relatable ways and to demonstrate the robustness of these findings.

Specifically, in this section, I re-analyze the simulated plans and the enacted SB 2 plan using two types of alternative measures of partisan electoral bias. These two measures – efficiency gap analysis and analysis of predicted election results using regression modeling – have been increasingly used by political scientists and other academics in studying redistricting, and they provide a robustness check for the partisan calculations presented thus far in this report.

Efficiency Gap of the Enacted and Simulated Plans:

To calculate the efficiency gap of the enacted SB 2 plan and of each simulated plan, I first determine the partisan leaning of each simulated district and each SB 2 district, as measured by the Hofeller formula. Using the Hofeller formula as a simple measure of district partisanship, I then calculate each districting plan's efficiency gap using the method outlined in *Partisan Gerrymandering and the Efficiency Gap*¹. Districts are classified as Democratic victories if, across the seven elections included in the Hofeller formula, the sum total of Democratic votes in the district during these elections exceeds the sum total of Republican votes; otherwise, the district is classified as Republican. For each party, I then calculate the total sum of surplus votes

¹ Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 University of Chicago Law Review 831 (2015).

in districts the party won and lost votes in districts where the party lost. Specifically, in a district lost by a given party, all of the party's votes are considered lost votes; in a district won by a party, only the party's votes exceeding the 50% threshold necessary for victory are considered surplus votes. A party's total wasted votes for an entire districting plan is the sum of its surplus votes in districts won by the party and its lost votes in districts lost by the party. The efficiency gap is then calculated as total wasted Republican votes minus total wasted Democratic votes, divided by the total number of two-party votes cast statewide across all seven elections.

Thus, the theoretical importance of the efficiency gap is that it tells us the degree to which more Democratic or Republican votes are wasted across an entire districting plan. An extremely positive efficiency gap indicates far more Republican wasted votes, while an extremely negative efficiency gap indicates far more Democratic wasted votes.

In addition to calculating the efficiency gap using each district's votes from the Hofeller formula, as described above, I also separately calculate the efficiency gap using the combined results from the 20 statewide 2008-2014 elections, as identified by the Adopted Criteria. As before, I sum up the total Democratic votes and total Republican votes from across the 20 elections and calculate a single efficiency gap for each simulated and enacted districting plan using these combined partisan vote counts.

Figure 10 illustrates the efficiency gap, using both sets of election results, of the 1,000 districting plans from Simulation Set 2. This is the set of plans produced under a districting algorithm that guarantees incumbents are never paired with one another within the same district while otherwise maximizing compliance with the five traditional districting criteria in the Adopted Criteria. Each black circle in Figure 10 represents a simulated districting plan, with its efficiency gap measured along the horizontal axis. The red star in each diagram represents the enacted SB 2 plan. The vertical axis measures the compactness of each districting plan, as measured by the plan's average Reock score.

The left diagram in Figure 10 shows the efficiency gap calculations using the Hofeller formula, while the right diagram in Figure 10 shows the efficiency gap calculations using the 20 statewide elections from 2008-2014. Using either formula, the two diagrams in Figure 10 both illustrate three important findings.

First, both diagrams reveal that the simulated districting plans are reasonably neutral with respect to electoral bias. Specifically, 53% of the simulated plans (529 of the 1,000 simulations)

exhibit an efficiency gap within 2% of zero, indicating de minimis electoral bias in favor of either party. In fact, 31% of the simulations produce an efficiency gap between -1.0% and +1.0%. These simulated plans with nearly zero efficiency gap are all plans that contain exactly seven Republican and six Democratic-leaning districts. These patterns illustrate that a non-partisan districting process strictly following the traditional districting criteria mandated by the Adopted Criteria very commonly produces a neutral congressional plan in North Carolina with minimal electoral bias as measured by efficiency gap.

Second, it is also important to note that the simulations produce plans with both slightly positive and negative efficiency gaps. But the broader, more striking finding in this analysis is that over one-half of the simulated plans produced by the partisan-neutral simulation algorithm strictly following traditional districting criteria are within 2% of a zero efficiency gap. Hence, it is clearly not difficult to create an electorally unbiased map when one strictly follows the non-partisan criteria from the Adopted Criteria. To produce a map with significant electoral bias deviating by over 10% from a zero efficiency gap, however, would require more extraordinary and deliberate map-drawing efforts beyond following the non-partisan guidelines set forth in the Adopted Criteria.

Third, the enacted SB 2 plan, denoted in each Figure 10 diagram as a red star, produces an efficiency gap that is extremely inconsistent with and outside of the entire range of the 1,000 computer-simulated plans. The enacted plan creates an efficiency gap of -24.2% using the Hofeller Formula and -30.4% using the 20 statewide elections from 2008-2014, indicating that the plan results in significantly more wasted Democratic votes than wasted Republican votes. As Figures 9 and 11 show, results are similar when we analyze the efficiency gap of plans in Simulation Sets 1 and 3 as well. Thus, the level of electoral bias in the SB 2 enacted plan is not only entirely outside of the range produced by the simulated plans, the enacted plan's efficiency gap is far more biased than even most biased of the 1,000 simulated plans. The improbable nature of the enacted plan's efficiency gap allows us to conclude with overwhelmingly high statistical certainty that neutral, non-partisan districting criteria, combined with North Carolina's natural political geography, could not have produced a districting plan as electorally skewed as the enacted SB 2 plan.

Predicted Election Results Using Regression Modeling:

An additional method commonly used by political scientists for analyzing the partisan performance of districting plans involves using regression modeling to estimate the partisan election results for any given congressional district. The underlying statistical intuition behind this approach is that analyzing a districting plan using the results from any legislative election contest inherently introduces some degree of error. The results from any given legislative election may deviate from the long-term partisan voting trends of the district's voters due to such factors as incumbency advantage, the presence or absence of a quality challenger, anomalous difference between the candidates in campaign efforts or campaign finances, candidate scandals, and coattail effects. These factors can even differ across different districts within the state of North Carolina, thus making it statistically unreliable to combine and directly compare election results from different congressional districts when evaluating a new districting plan.

Thus, a more robust approach is to statistically model the congressional elections voting patterns of any given constituency – such as a VTD, county, or congressional district – using the results from a statewide, federal election contest, such as a US presidential election. I then apply this statistical model to predict the likely level of future partisan voting in congressional elections for an enacted congressional district or a computer-simulated congressional district. Applying this model to an enacted district, for example, can give us a statistical prediction of the likely level of electoral support for a future Democratic congressional candidate. This prediction also allows me to account for the presence of either a Democratic or Republican incumbent in the district. I am thus able to compare the predicted partisan breakdown of districts within the simulated districting plans and the enacted SB 2 districting plan, and these predictions are able to account for the presence of the various 13 congressional incumbents (as of November 2016) across North Carolina.

The first statistical model I use is a VTD-level regression analysis that predicts Republican candidates' vote share in the November 2012 congressional elections. The regression model predicts Republican vote share using Mitt Romney's (Republican) vote share in each VTD in November 2012. As Figure 12 demonstrates, at the VTD-level in North Carolina, presidential election votes for Obama and Romney were extremely highly correlated with partisan votes in the November 2012 congressional elections. Thus, presidential voting is a quite accurate and useful predictor for this regression model. Additionally, the model includes control

variables accounting for the presence of a Democratic incumbent or a Republican incumbent House member in the district and the voter turnout in the 2012 presidential election, expressed as the number of presidential votes cast, divided by the voting age population (VAP) of the VTD.

The second statistical model I estimate is a VTD-level regression predicting the voter turnout rate in the 2012 congressional elections, expressed as the number of congressional votes cast divided by VAP. This model predicts congressional election turnout using 2012 presidential election turnout as a predictor, in addition to all of the predictors from the first model. Hence, there are two separate models with the following full regression model specifications:

$$\begin{aligned} \text{Republican Congressional Vote Share}_i = & \\ & \alpha + \beta_1 * \text{Republican Presidential Vote Share}_i \\ & + \beta_3 * \text{Republican Incumbent}_i + \beta_4 * \text{Democratic Incumbent}_i + \beta_5 * \text{VAP}_i \\ & + \beta_6 * \text{Presidential Election Turnout} + \varepsilon_i \end{aligned}$$

$$\begin{aligned} \text{Congressional Election Turnout Rate}_i = & \\ & \alpha + \beta_1 * \text{Republican Presidential Vote Share}_i \\ & + \beta_3 * \text{Republican Incumbent}_i + \beta_4 * \text{Democratic Incumbent}_i + \beta_5 * \text{VAP}_i \\ & + \beta_6 * \text{Presidential Election Turnout} + \varepsilon_i \end{aligned}$$

These two models explain the partisan results in the 2012 congressional elections in each VTD of North Carolina as a function of three factors: The underlying partisanship of the VTD, as measured by presidential voting, the presence of Democratic or Republican incumbents in the district in which the VTD is located, and the presidential election turnout in the VTD. Table 2 presents both full estimated regression models.

The two models have an R-squared of 0.985 and 0.992, indicating that the models are able to predict the results of the November 2012 congressional elections with very high statistical accuracy. In particular, the estimated model coefficients reveal that partisan support for congressional candidates in 2012 was largely explained by voters' underlying partisanship, as measured by their presidential voting behavior: In general, Obama voters also supported Democratic congressional candidates, while Romney voters supported Republican congressional candidates. Additionally, the presence of incumbents has a small effect on election results as well: The presence of a Republican incumbent in a VTD's district increases electoral support for the Republican congressional candidate by about 3.1%, while the presence of a Democratic incumbent boosts the Democratic congressional candidate's vote totals by approximately 3.2%. The presence of an incumbent of either party also boosts the overall voter turnout rate.

Next, I apply these two regression models to each of the simulated plans and the enacted plan in order to calculate the predicted partisanship of each district within each plan and the overall efficiency gap of each plan. As before, the motivation of this analysis is to determine whether the enacted plan's partisanship could possibly have arisen from a non-partisan map-drawing process respecting traditional districting criteria. I conduct this analysis using two different approaches:

Predicted Congressional Election Results with Incumbency Advantage: First, I used the regression model to evaluate the partisanship of the simulated and enacted plans, accounting for all 13 House incumbents in North Carolina as of the November 2016 congressional elections. Specifically, I geocoded the residential locations of North Carolina's 13 incumbent House members from the 114th Congress. I then overlaid the incumbents' locations onto the enacted map and each of the 1,000 simulated maps, thus identifying which district each incumbent resides in within each of these plans. I use this information to apply the appropriate incumbency advantage adjustment, as estimated in the two regression models in Table 2, for each districting plan. This incumbency advantage adjustment, as estimated in the regression models, effectively boosts Republican vote share by 3.1% when the district contains a Republican incumbent. Meanwhile, Democratic vote share increases by 3.2% when the district contains a Democratic incumbent.

To predict the partisanship of each district using the two regression models, I generate predicted Republican and Democratic congressional vote share estimates for each district. For example, District 1 of the enacted plan supported Mitt Romney at a 31.47% rate, and 62.76% of the voting age population cast presidential ballots in November 2012. Additionally, District 1 contains a Democratic incumbent (G.K. Butterfield). Applying the two regression models to this information regarding District 1 generates the following predictions: Assuming an election race with a Democratic incumbent and no Republican incumbent, District 1 would support the Republican congressional candidate at a 27.90% rate, while 61.90% of the voting age population would cast congressional election ballots. Thus, the two models collectively predict District 1 to be a clearly Democratic-leaning district, and the models make a prediction not only about the level of partisan support for Republican and Democratic candidate, but also the total number of congressional election votes cast in each district.

I use this approach to generate predictions regarding the partisanship of all districts in the enacted plan and in the 1,000 plans in Simulation Set 2. This is the set of simulated plans produced under a districting algorithm that guarantees incumbents are never paired with one another within the same district while otherwise maximizing compliance with the five traditional districting criteria in the Adopted Criteria.

The predicted partisanship of these 1,000 simulated plans appears in the left diagram of Figure 13. The calculations in Figure 13 show that the vast majority of the 1,000 simulated plans contain 6, 7, or 8 districts that are predicted to favor Republican congressional candidates. Only 1.3% of plans ever create 9 predicted Republican districts, and no simulated plan ever contains more than 9 such districts.

By contrast, I find that the enacted SB 2 plan contains three districts predicted to favor Democratic candidates: Districts 1, 4, and 12. The remaining 10 districts are predicted to favor Republican candidates. This prediction of a 10-3 split in the partisan control of the enacted plan's seats confirms my earlier calculations regarding the enacted plan's partisanship using the Hofeller formula and using the 20 elections specified by the Adopted Criteria.

Finally, I calculate the efficiency gap of the enacted plan and the simulated plans using the predicted congressional election votes. The regression models I estimated predict not only the Republican vote share for congressional elections, but also the voter turnout level. Hence, the model effectively makes a prediction about the total number of Republican and Democratic votes cast in a congressional election in any given district. I thus use these total partisan vote predictions to calculate each plan's efficiency gap.

These efficiency gap calculations appear in the right diagram of Figure 13. In this diagram, the horizontal axis reports the efficiency gap of the plan, with lower efficiency gaps indicating more wasted Democratic votes than wasted Republican votes. The vertical axis measures the average Reock score for each plan. These calculations broadly confirm the earlier findings regarding the efficiency gap of the SB 2 plan. A districting process following the non-partisan criteria listed in the Adopted Criteria would have very easily achieved drawing a plan with zero efficiency gap, as measured by predicted congressional votes. In fact, 603 of the 1,000 simulated plans had an efficiency gap within 2% of zero. However, the enacted SB 2 plan's efficiency gap of -24.4%, as indicated in Figure 13 by a red star, is once again well outside of the entire range of efficiency gaps produced by the 1,000 simulations.

Together, these findings again confirm the main conclusion of this report described earlier: The enacted plan's creation of 10 Republican-leaning districts is an outcome that could not have emerged from a non-partisan map-drawing process adhering to the traditional districting criteria in the Adopted Criteria. Instead, the enacted plan could have been created only through a process in which the explicit pursuit of partisan advantage was the predominant factor, thus subordinating the traditional districting criteria from the Adopted Criteria.

Predicted Congressional Election Results with No Incumbents: Next, I apply the regression model to the simulated and enacted plans by asking a slightly different question: What would be the likely partisanship of each of the simulated and enacted districts if all districts were open seats with no incumbents? In other words, this analysis specifically focuses on predicting whether a Democratic or Republican would win each district in a hypothetical congressional election in which North Carolina has no incumbents, and all seats are therefore open races.

To predict the partisan voting patterns of each district in an open-seat election, I use the same regression model and predictive approach as before, but with one change: I assume that each of the 13 districts in each plan contains no incumbents. Thus, I intentionally compute no predicted incumbency advantage for either party when applying the regression models to data regarding each districting plan. Once again, I use this approach to analyze the 1,000 plans in Simulation Set 2, the set of simulated plans seeking to guarantee incumbents are never paired with one another within a district while otherwise maximizing compliance with the five traditional districting criteria in the Adopted Criteria.

The predicted partisanship of these 1,000 simulated plans appears in the left diagram of Figure 14. The calculations in Figure 14 show that over 90% of the 1,000 simulated plans contain 5 to 7 districts predicted to favor Republican congressional candidates. Fewer than 5% of the simulations produce 8 Republican districts, and only one simulation reaches 9 Republican districts. Once again, not a single plan contains ten or more Republican districts. As well, I evaluate the enacted SB 2 plan using the same hypothetical situation of 13 open seats with no incumbents. I found, once again, that 10 of the enacted districts out of 13 are predicted to favor Republicans, while only Districts 1, 4, and 12 favor Democratic candidates. Hence, under the assumption of elections with no incumbents, the enacted plan continues to exhibit a 10-3 split in

the partisan control of its districts, placing it completely outside the entire range of outcomes observed in the 1,000 simulations.

The right diagram in Figure 14 presents calculations of the efficiency gap of the 1,000 simulated plans and the enacted plan using predicted congressional votes under the assumption of no incumbents. Under this measure of partisanship, the enacted plan has an efficiency gap of -26.2%, which is very significantly outside of the entire range of the efficiency gaps for the simulated plans. Together, these findings provide further confirmation of this report's main conclusions. The enacted plan's creation of 10 Republican-leaning districts is not an outcome that could have plausibly emerged from a non-partisan map-drawing process respecting traditional districting criteria.

Figure 9:

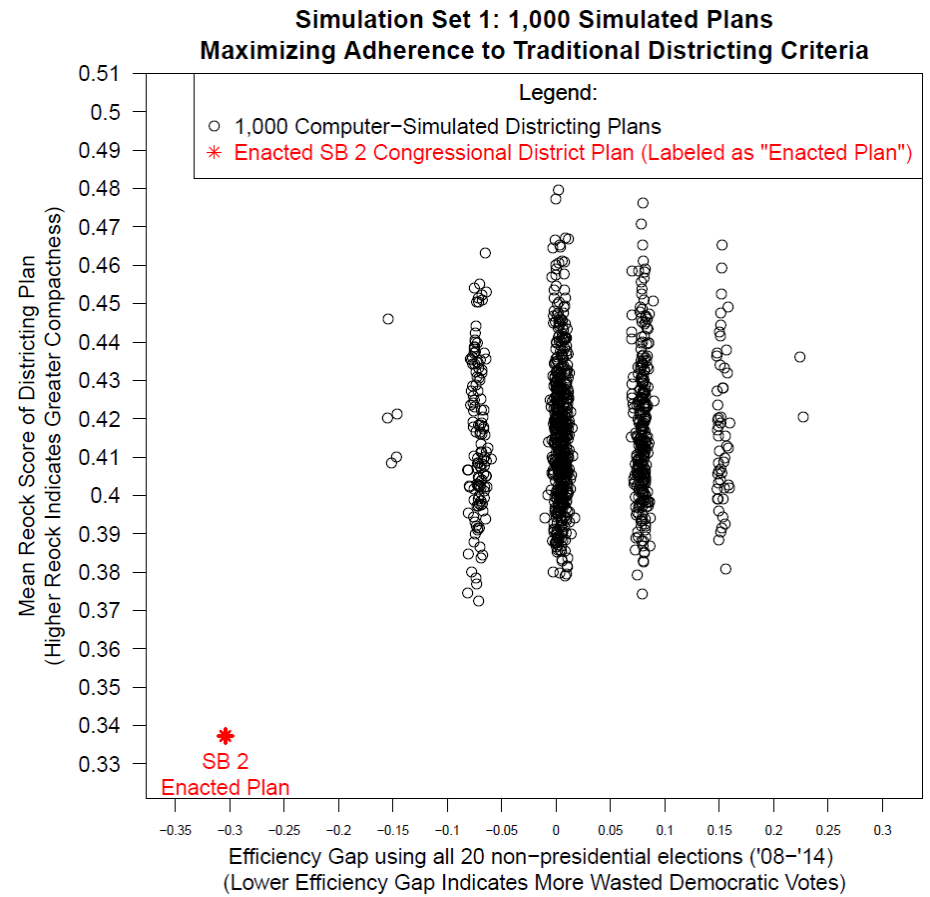
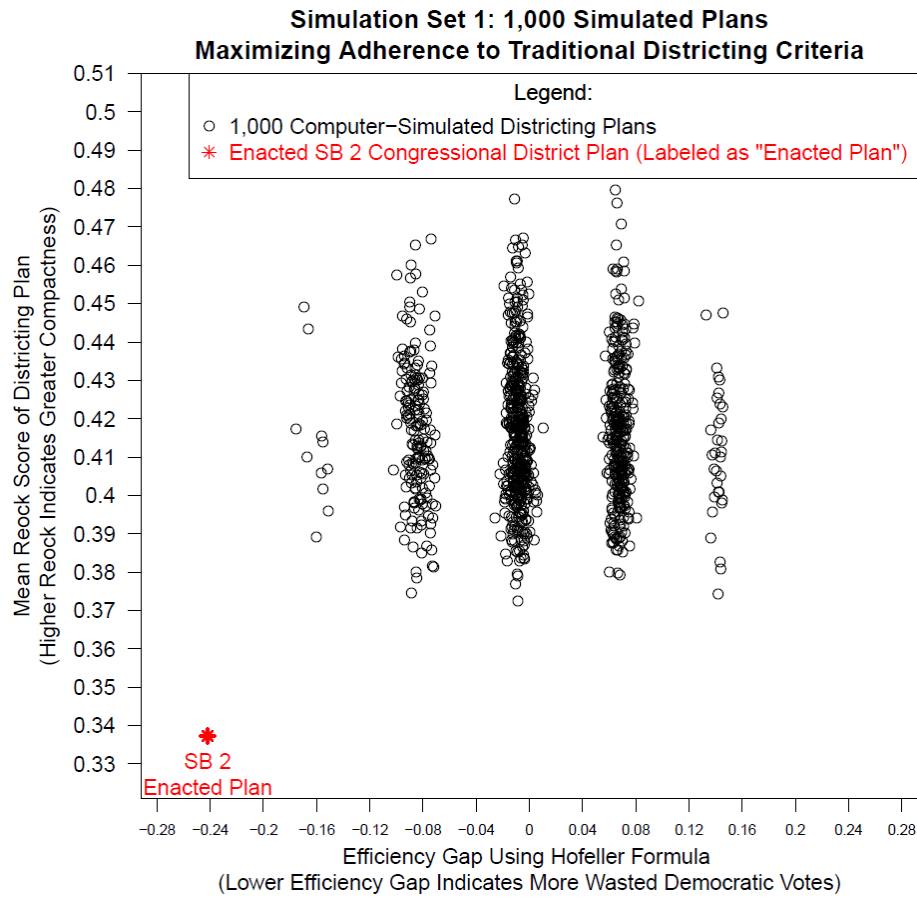


Figure 10:

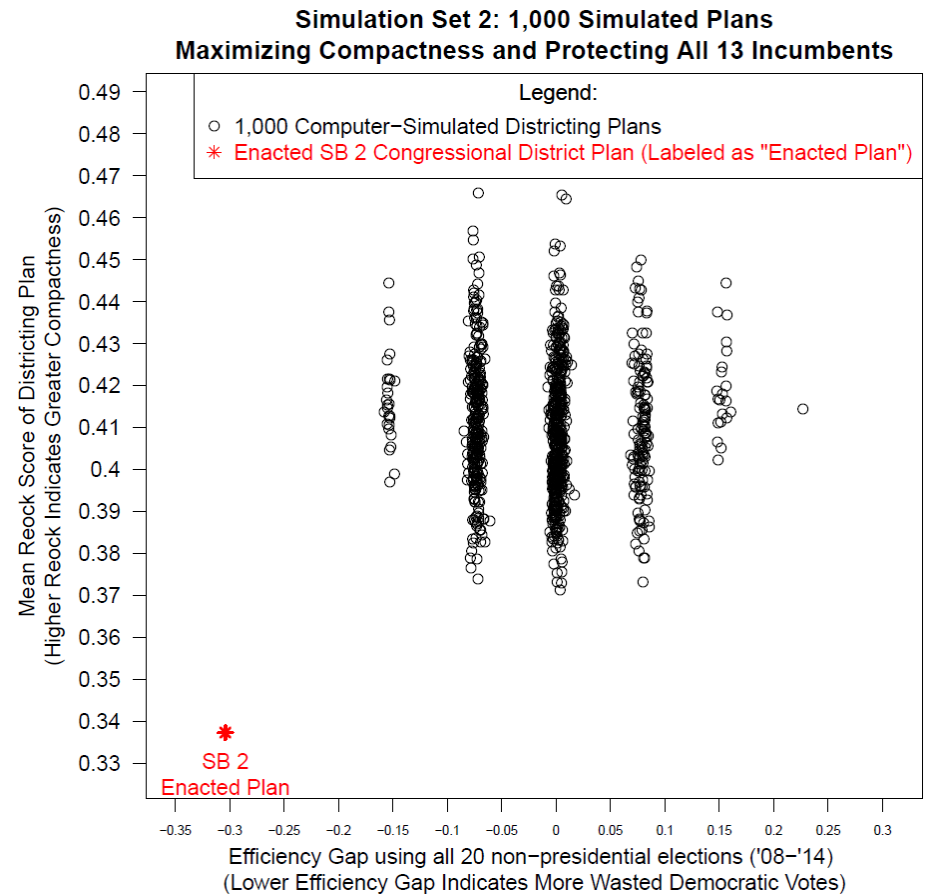
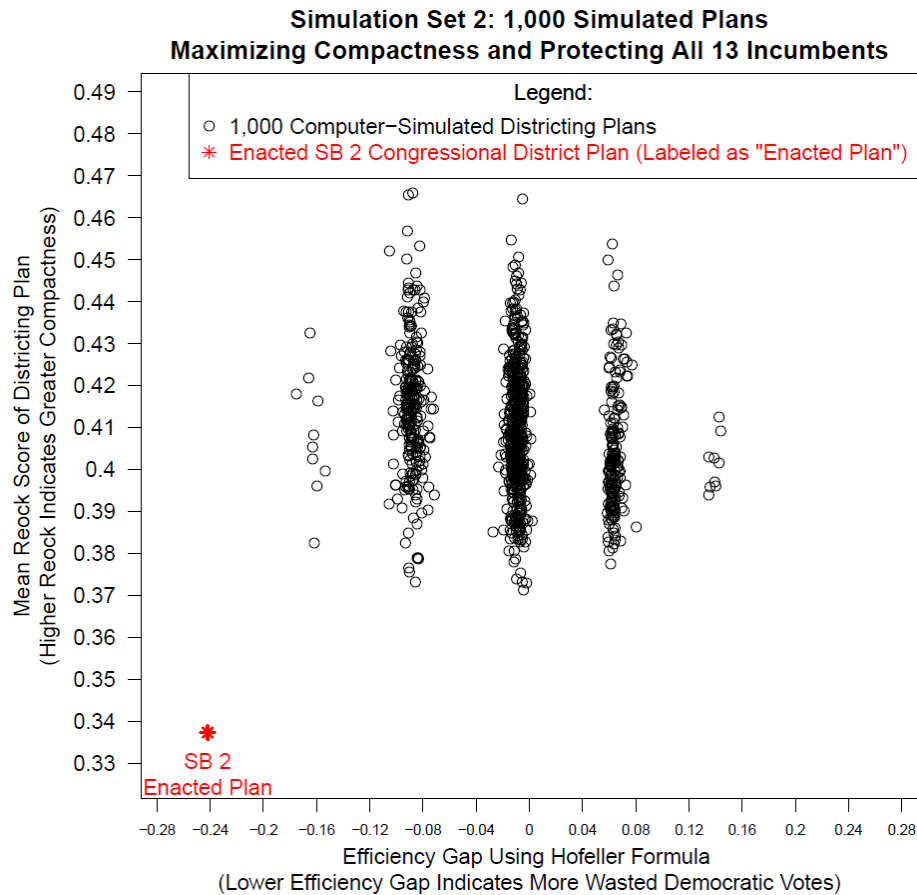


Figure 11:

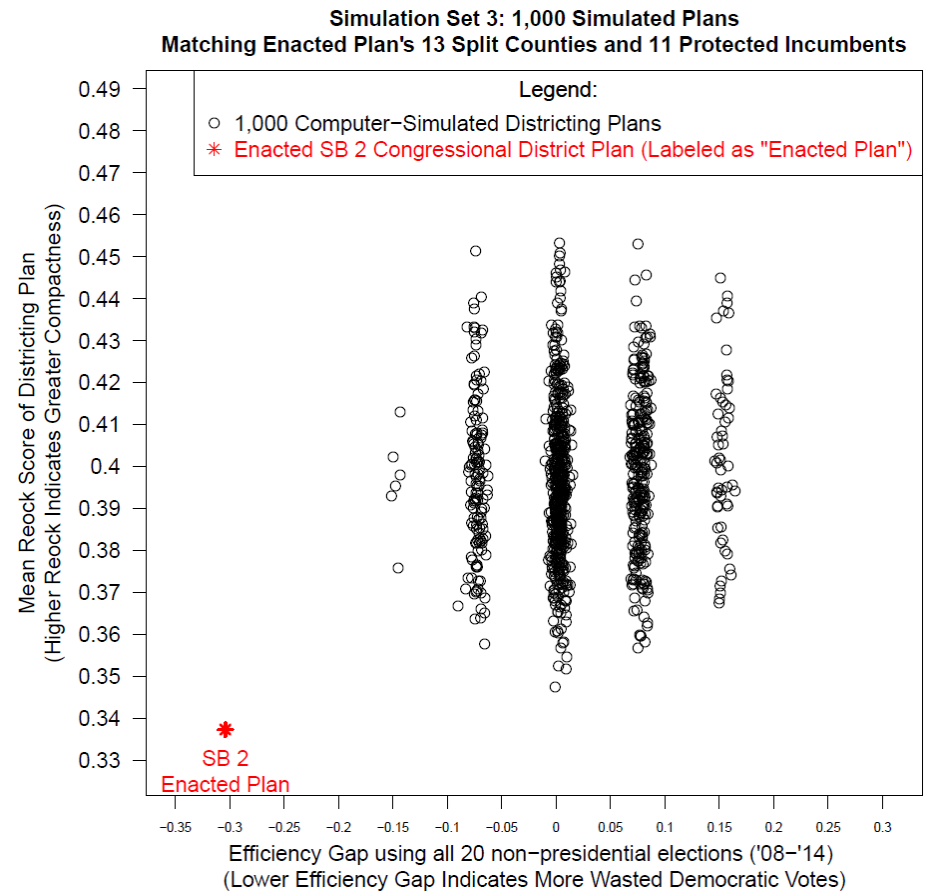
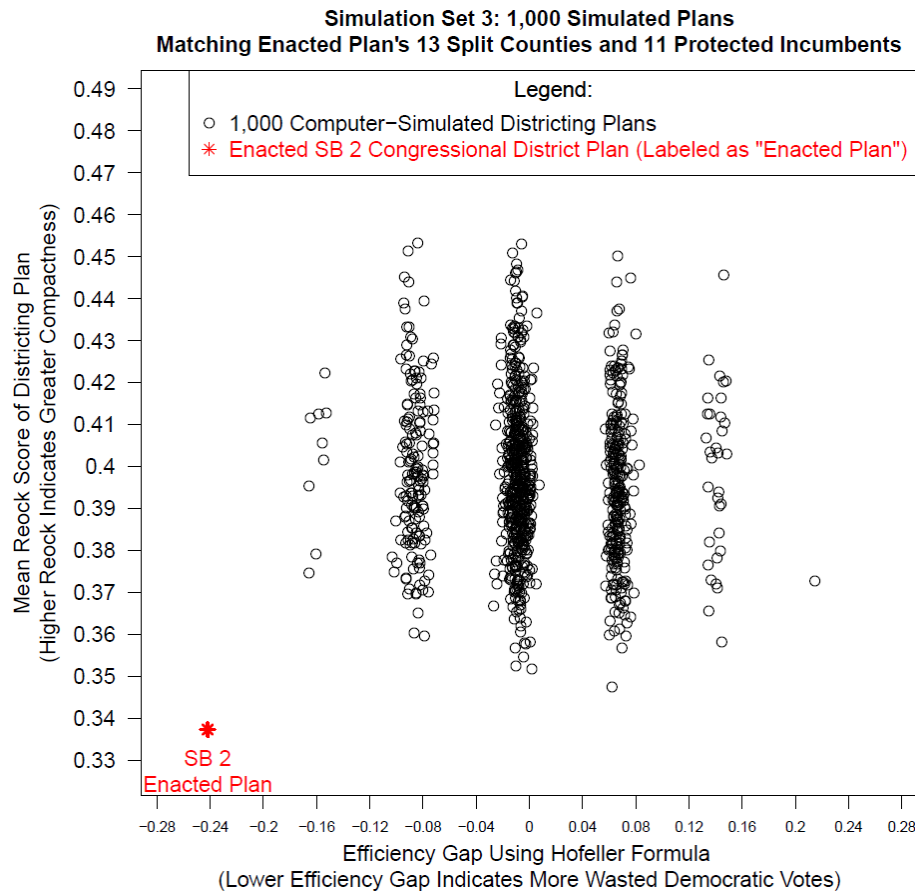


Figure 12:

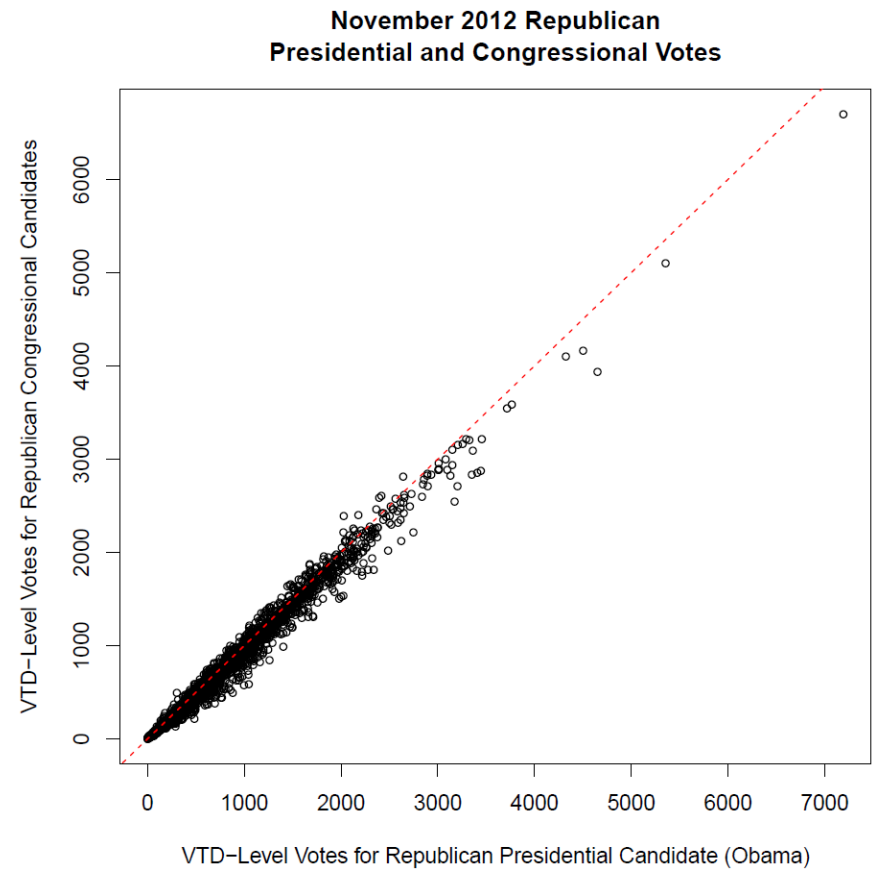
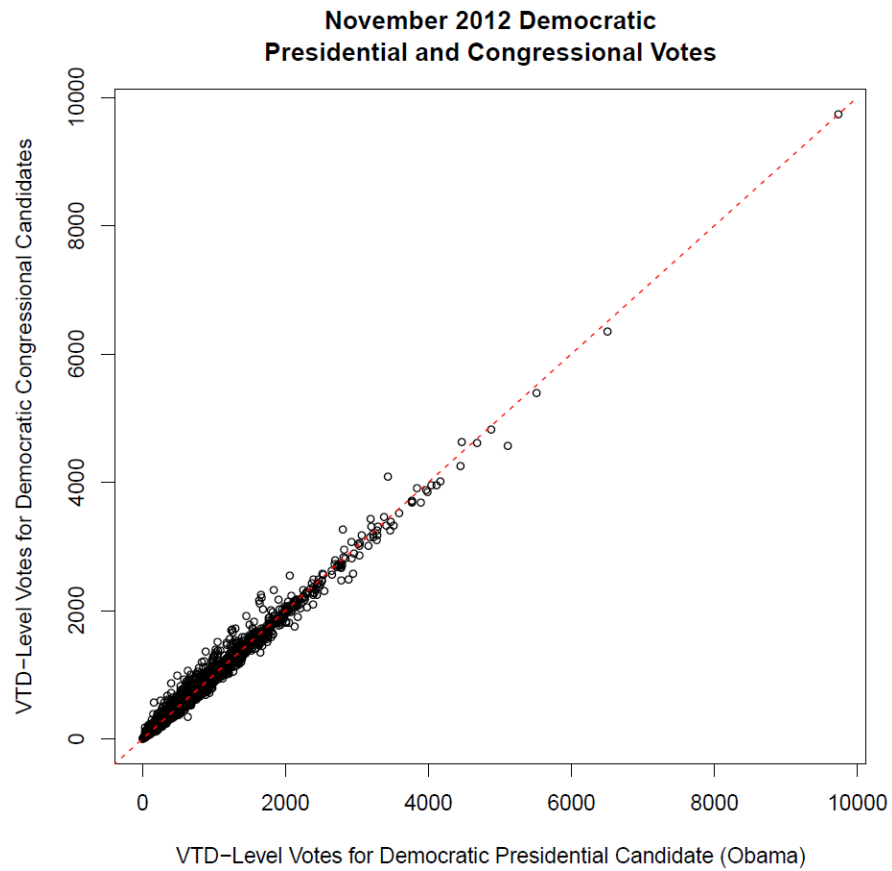


Figure 13:

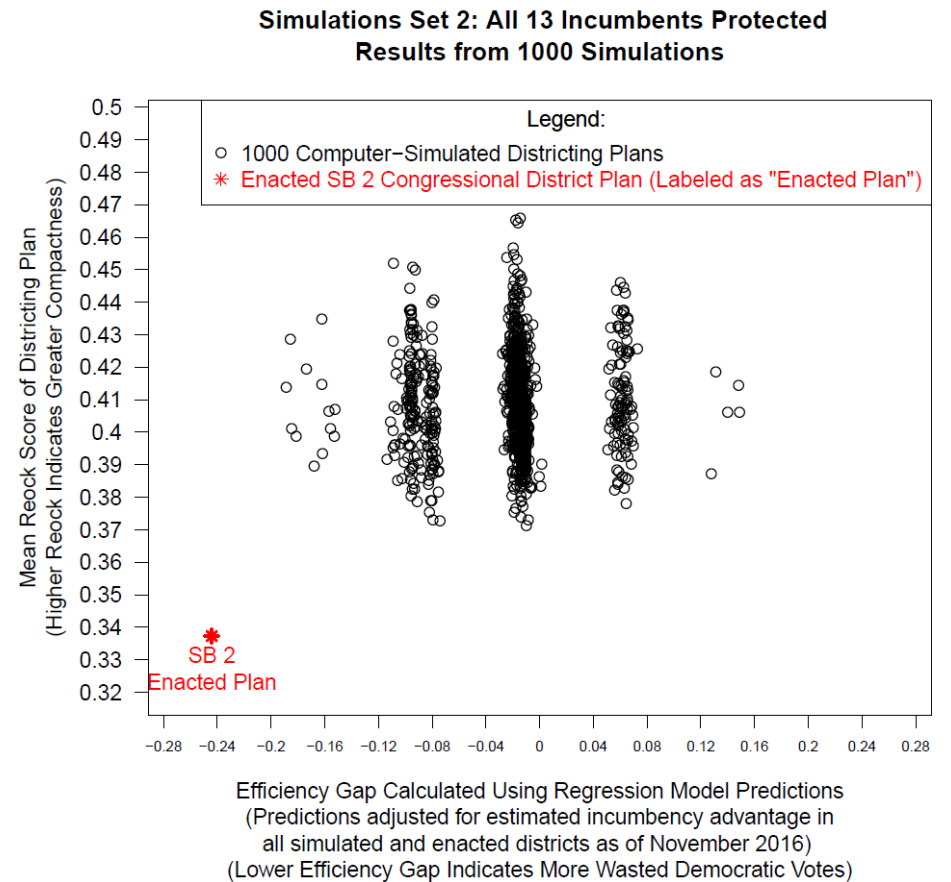
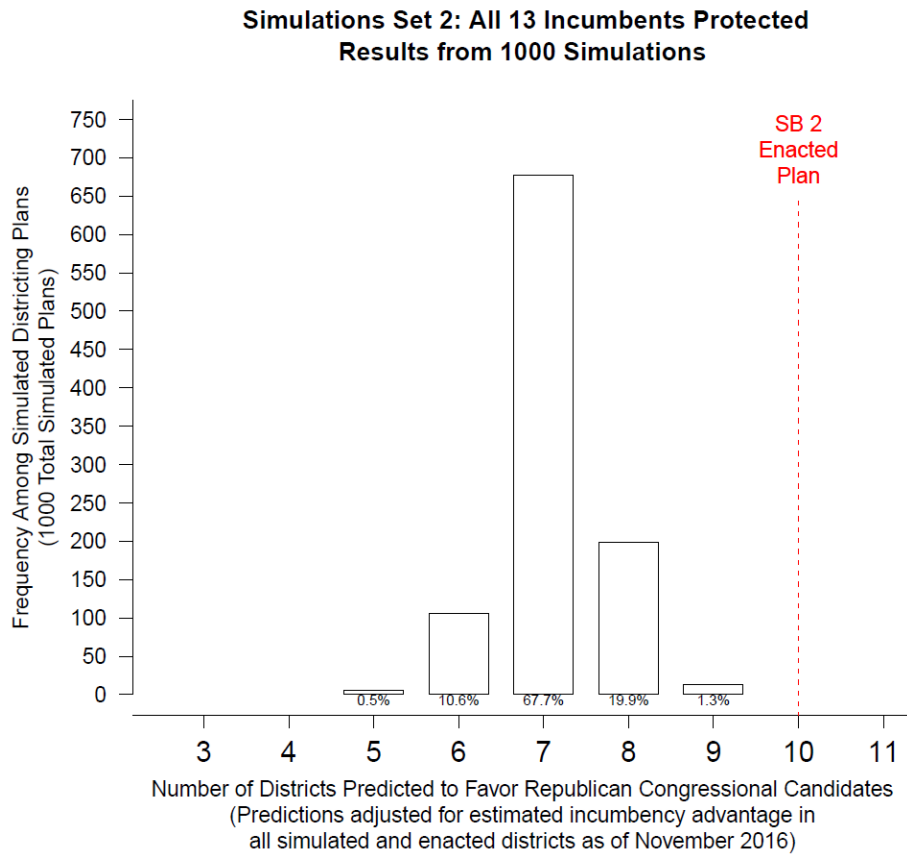


Figure 14:

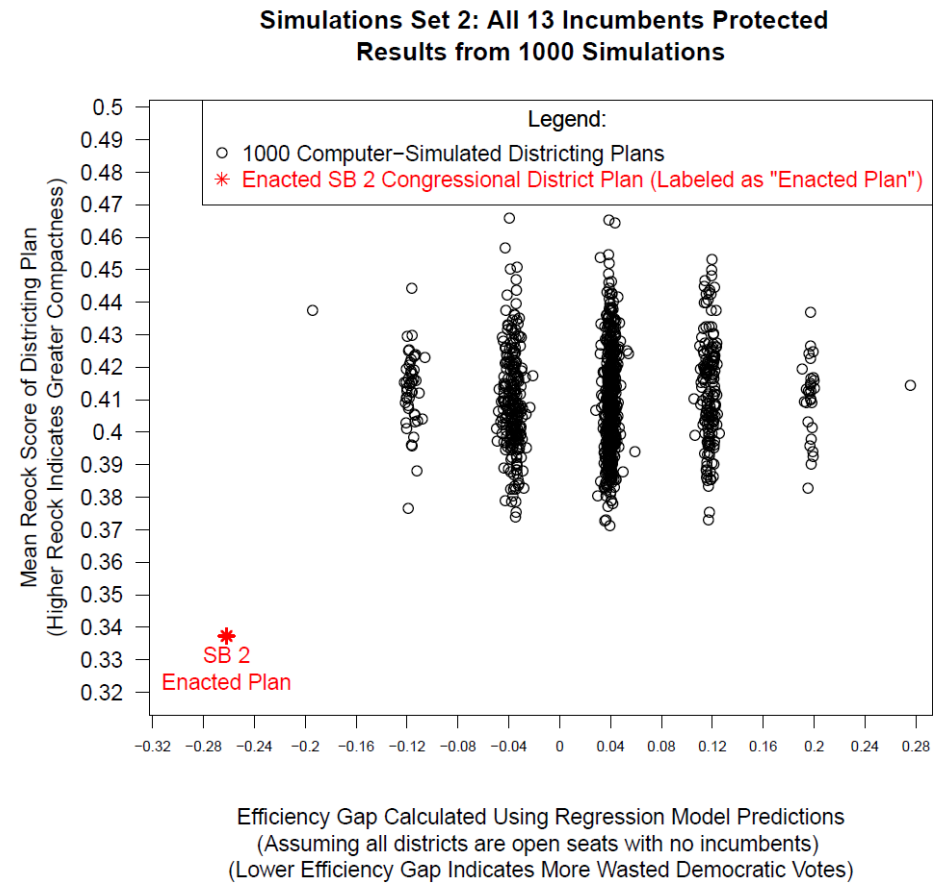
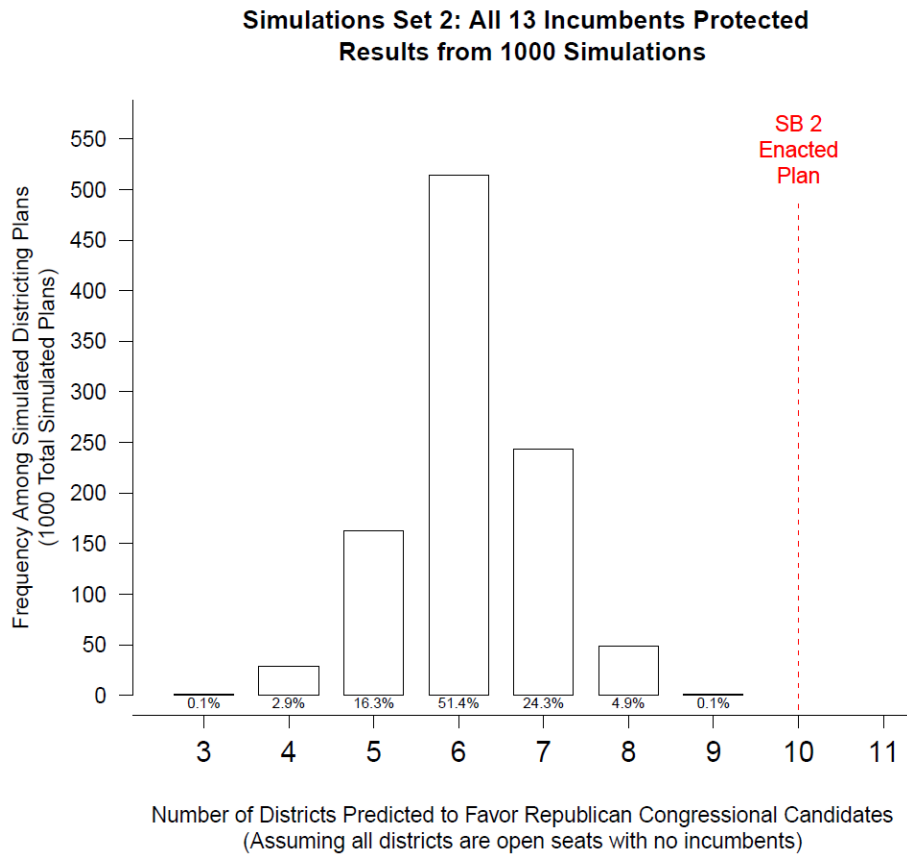


Table 2:
VTD-Level Regression Models
Predicting 2012 Congressional Election Results and Turnout

	<i>Model 1:</i>	<i>Model 2:</i>
	<i>Dependent Variable:</i> Republican Vote Share in Congressional Elections (Nov 2012)	<i>Dependent Variable:</i> Turnout Rate for Nov 2012 Congressional Elections (Votes / Voting Age Pop.)
Independent Variables:		
Republican (Romney) Presidential Vote Share, November 2012	0.911*** (0.004)	0.007*** (0.002)
Precinct's Congressional District has a Republican Incumbent	0.031*** (0.003)	0.006*** (0.001)
Precinct's Congressional District has a Democratic Incumbent	-0.032*** (0.002)	0.008*** (0.001)
Turnout Rate for Nov 2012 Presidential Elections (Votes / Voting Age Pop.)	0.009 (0.005)	0.978*** (0.002)
County Fixed Effects	Included	Included
Constant	0.026 (0.006)	-0.004 (0.003)
N	2,692	2,692
Adjusted R-squared	0.985	0.992

*p<.05; **p<0.01, ***p<0.001

The foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Jowei Chen', written over a horizontal line.

Jowei Chen

March 1, 2017

Jowei Chen
Curriculum Vitae

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Academic Positions:

Associate Professor (2015-present), Assistant Professor (2009-2015), Department of Political Science, University of Michigan.

Faculty Associate, Center for Political Studies, University of Michigan, 2009 – Present.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2013.

Principal Investigator and Senior Research Fellow, Center for Governance and Public Policy Research, Willamette University, 2013 – Present.

Education:

Ph.D., Political Science, Stanford University (June 2009)

M.S., Statistics, Stanford University (January 2007)

B.A., Ethics, Politics, and Economics, Yale University (May 2004)

Publications:

Chen, Jowei and Neil Malhotra. 2007. "The Law of k/n: The Effect of Chamber Size on Government Spending in Bicameral Legislatures."

[*American Political Science Review*. 101\(4\): 657-676.](#)

Chen, Jowei, 2010. "The Effect of Electoral Geography on Pork Barreling in Bicameral Legislatures."

[*American Journal of Political Science*. 54\(2\): 301-322.](#)

Chen, Jowei, 2013. "Voter Partisanship and the Effect of Distributive Spending on Political Participation."

[*American Journal of Political Science*. 57\(1\): 200-217.](#)

Chen, Jowei and Jonathan Rodden, 2013. "Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures"

[*Quarterly Journal of Political Science*, 8\(3\): 239-269.](#)

Chen, Jowei and Tim Johnson, 2015. "Federal Employee Unionization and Presidential Control of the Bureaucracy: Estimating and Explaining Ideological Change in Executive Agencies."

[*Journal of Theoretical Politics*, Volume 27, No. 1: 151-174.](#)

Bonica, Adam, Jowei Chen, and Tim Johnson, 2015. "Senate Gate-Keeping, Presidential Staffing of 'Inferior Offices' and the Ideological Composition of Appointments to the Public Bureaucracy."

[*Quarterly Journal of Political Science*. Volume 10, No. 1: 5-40.](#)

Bradley, Katharine and Jowei Chen, 2014. "Participation Without Representation? Senior Opinion, Legislative Behavior, and Federal Health Reform."

[*Journal of Health Politics, Policy and Law*. 39\(2\), 263-293.](#)

Chen, Jowei and Jonathan Rodden, 2015. "Redistricting Simulations and the Detection Cutting through the Thicket: of Partisan Gerrymanders."

[*Election Law Journal*. Volume 14, Number 4: 331-345.](#)

Chen, Jowei, 2014. "Split Delegation Bias: The Geographic Targeting of Pork Barrel Earmarks in Bicameral Legislatures."

[*Revise and Resubmit, State Politics and Policy Quarterly*.](#)

Chen, Jowei and David Cottrell, 2016. "Evaluating Partisan Gains from Congressional Gerrymandering: Using Computer Simulations to Estimate the Effect of Gerrymandering in the U.S. House."

[*Forthcoming 2016, Electoral Studies*.](#)

Chen, Jowei, 2016. "Analysis of Computer-Simulated Districting Maps for the Wisconsin State Assembly."

[*Forthcoming 2017, Election Law Journal*.](#)

Research Grants:

Principal Investigator. [National Science Foundation Grant SES-1459459](#), September 2015 – August 2017 (\$165,008). "The Political Control of U.S. Federal Agencies and Bureaucratic Political Behavior."

"Economic Disparity and Federal Investments in Detroit," (with Brian Min) 2011. Graham Institute, University of Michigan (\$30,000).

"The Partisan Effect of OSHA Enforcement on Workplace Injuries," (with Connor Raso) 2009. John M. Olin Law and Economics Research Grant (\$4,410).

Invited Talks:

September, 2011. University of Virginia, American Politics Workshop.

October 2011. Massachusetts Institute of Technology, American Politics Conference.

January 2012. University of Chicago, Political Economy/American Politics Seminar.

February 2012. Harvard University, Positive Political Economy Seminar.

September 2012. Emory University, Political Institutions and Methodology Colloquium.
November 2012. University of Wisconsin, Madison, American Politics Workshop.
September 2013. Stanford University, Graduate School of Business, Political Economy Workshop.
February 2014. Princeton University, Center for the Study of Democratic Politics Workshop.
November 2014. Yale University, American Politics and Public Policy Workshop.
December 2014. American Constitution Society for Law & Policy Conference: Building the Evidence to Win Voting Rights Cases.
February 2015. University of Rochester, American Politics Working Group.
March 2015. Harvard University, Voting Rights Act Workshop.
May 2015. Harvard University, Conference on Political Geography.
October 2015. George Washington University School of Law, Conference on Redistricting Reform.

Conference Service:

Section Chair, 2017 APSA (Chicago, IL), Political Methodology Section
Discussant, 2014 Political Methodology Conference (University of Georgia)
Section Chair, 2012 MPSA (Chicago, IL), Political Geography Section.
Discussant, 2011 MPSA (Chicago, IL) "Presidential-Congressional Interaction."
Discussant, 2008 APSA (Boston, MA) "Congressional Appropriations."
Chair and Discussant, 2008 MPSA (Chicago, IL) "Distributive Politics: Parties and Pork."

Conference Presentations and Working Papers:

"Ideological Representation of Geographic Constituencies in the U.S. Bureaucracy," (with Tim Johnson). 2016 APSA.

"Incentives for Political versus Technical Expertise in the Public Bureaucracy," (with Tim Johnson). 2016 APSA.

"Racial Gerrymandering and Electoral Geography." Working Paper, 2016.

"Does Deserved Spending Win More Votes? Evidence from Individual-Level Disaster Assistance," (with Andrew Healy). 2014 APSA.

"The Geographic Link Between Votes and Seats: How the Geographic Distribution of Partisans Determines the Electoral Responsiveness and Bias of Legislative Elections," (with David Cottrell). 2014 APSA.

"Gerrymandering for Money: Drawing districts with respect to donors rather than voters." 2014 MPSA.

"Constituent Age and Legislator Responsiveness: The Effect of Constituent Opinion on the Vote for Federal Health Reform." (with Katharine Bradley) 2012 MPSA.

“Voter Partisanship and the Mobilizing Effect of Presidential Advertising.” (with Kyle Dropp) 2012 MPSA.

“Recency Bias in Retrospective Voting: The Effect of Distributive Benefits on Voting Behavior.” (with Andrew Feher) 2012 MPSA.

“Estimating the Political Ideologies of Appointed Public Bureaucrats,” (with Adam Bonica and Tim Johnson) 2012 Annual Meeting of the Society for Political Methodology (University of North Carolina)

“Tobler’s Law, Urbanization, and Electoral Bias in Florida.” (with Jonathan Rodden) 2010 Annual Meeting of the Society for Political Methodology (University of Iowa)

“Unionization and Presidential Control of the Bureaucracy” (with Tim Johnson) 2011 MPSA.

“Estimating Bureaucratic Ideal Points with Federal Campaign Contributions” 2010 APSA. (Washington, DC).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” Vanderbilt University Conference on Bicameralism, 2009.

"When Do Government Benefits Influence Voters' Behavior? The Effect of FEMA Disaster Awards on US Presidential Votes," 2009 APSA (Toronto, Canada).

"Are Poor Voters Easier to Buy Off?" 2009 APSA (Toronto, Canada).

"Credit Sharing Among Legislators: Electoral Geography's Effect on Pork Barreling in Legislatures," 2008 APSA (Boston, MA).

“Buying Votes with Public Funds in the US Presidential Election,” Poster Presentation at the 2008 Annual Meeting of the Society for Political Methodology (University of Michigan).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” 2008 MPSA.

“Legislative Free-Riding and Spending on Pure Public Goods,” 2007 MPSA (Chicago, IL).

“Free Riding in Multi-Member Legislatures,” (with Neil Malhotra) 2007 MPSA (Chicago, IL).

“The Effect of Legislature Size, Bicameralism, and Geography on Government Spending: Evidence from the American States,” (with Neil Malhotra) 2006 APSA (Philadelphia, PA).

Reviewer Service:

American Journal of Political Science
American Political Science Review
Journal of Politics
Quarterly Journal of Political Science

American Politics Research
Legislative Studies Quarterly
State Politics and Policy Quarterly
Journal of Public Policy
Journal of Empirical Legal Studies
Political Behavior
Political Research Quarterly
Political Analysis
Public Choice
Applied Geography

Exhibit 4

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
1	16	6	11	4.11%	9.66%	30.59%	14.59%	10.93%	24.74%	17.62%	27.67%	21.14%	29.09%	40.22%	21.35%	17.68%
1	24	6	9	3.91%	9.87%	25.88%	20.50%	14.38%	27.83%	20.48%	22.95%	40.78%	28.66%	21.38%	21.17%	11.55%
1	31	6	10	3.87%	10.43%	30.32%	16.31%	22.82%	29.15%	17.07%	27.64%	14.66%	40.44%	14.31%	22.06%	20.15%
1	32	6	11	3.87%	9.92%	25.55%	20.85%	14.01%	23.61%	25.56%	19.09%	27.18%	17.71%	41.44%	19.48%	21.65%
1	49	7	12	3.94%	9.97%	30.50%	16.12%	10.15%	23.06%	20.05%	27.88%	20.54%	24.69%	20.88%	40.39%	21.26%
1	70	5	9	3.91%	10.12%	7.53%	23.42%	20.41%	20.68%	23.96%	30.23%	41.30%	21.07%	18.69%	27.11%	21.27%
1	71	7	12	3.94%	8.94%	27.17%	18.42%	16.47%	18.58%	19.03%	29.24%	22.16%	24.83%	18.01%	42.22%	20.65%
1	78	6	10	4.09%	9.37%	28.90%	16.61%	13.00%	28.31%	21.37%	15.23%	21.58%	40.82%	21.37%	17.91%	31.07%
1	84	5	8	3.88%	10.37%	7.53%	17.48%	26.54%	20.40%	23.24%	40.43%	24.21%	19.19%	27.49%	16.86%	32.21%
1	91	5	8	3.59%	10.71%	10.11%	17.77%	25.26%	21.33%	26.36%	40.20%	20.66%	18.23%	28.91%	30.48%	15.85%
1	102	7	9	3.92%	9.86%	30.59%	16.18%	8.77%	20.58%	23.26%	14.85%	27.79%	41.25%	25.37%	18.29%	28.64%
1	103	8	11	4.08%	9.35%	27.81%	18.93%	28.19%	17.85%	26.82%	21.48%	21.22%	11.46%	41.82%	20.71%	19.90%
1	105	7	10	4.10%	8.96%	26.12%	19.26%	18.12%	12.86%	22.09%	29.80%	18.05%	26.44%	18.18%	24.10%	41.34%
1	106	10	11	3.99%	9.61%	25.70%	20.88%	20.78%	27.43%	20.57%	16.05%	24.19%	18.31%	40.28%	22.56%	19.40%
1	154	8	11	3.86%	9.16%	26.95%	19.45%	24.64%	27.93%	19.15%	19.15%	28.19%	7.96%	40.13%	22.73%	20.45%
1	163	7	10	3.89%	8.90%	26.42%	19.34%	17.22%	16.12%	20.45%	14.29%	27.58%	41.60%	21.26%	22.44%	29.94%
1	167	6	12	4.59%	19.45%	27.79%	15.79%	5.06%	25.45%	18.07%	25.67%	21.78%	19.71%	21.73%	40.14%	24.36%
1	185	6	11	4.00%	11.65%	30.78%	18.32%	18.12%	24.60%	20.96%	22.55%	26.03%	9.87%	41.07%	21.49%	20.42%
1	186	5	8	3.86%	11.64%	5.28%	25.46%	19.43%	21.64%	25.83%	40.73%	20.73%	22.98%	23.85%	18.75%	29.64%
1	192	9	11	3.92%	9.98%	21.98%	21.03%	12.71%	27.85%	18.30%	25.37%	26.15%	19.79%	40.65%	22.14%	19.51%
1	199	4	8	4.07%	8.77%	15.75%	25.53%	12.19%	20.58%	25.57%	40.41%	21.64%	17.59%	29.88%	19.79%	27.80%
1	207	5	9	3.89%	11.09%	6.88%	22.17%	23.93%	20.74%	27.22%	17.93%	42.20%	24.02%	18.99%	18.80%	32.14%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

DEFENDANT'S EXHIBIT

Case No. 16cv1026

16cv1164

Exhibit No. 5038

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
1	220	4	8	3.69%	10.59%	9.64%	29.72%	25.48%	22.09%	23.74%	40.07%	21.76%	19.94%	14.47%	27.15%	21.23%
1	234	7	9	3.95%	7.61%	27.68%	19.32%	16.48%	18.40%	19.49%	14.66%	29.14%	41.13%	24.58%	18.34%	28.72%
1	270	7	9	3.89%	9.25%	26.48%	20.85%	17.05%	16.74%	19.02%	17.38%	25.66%	40.87%	25.50%	18.26%	28.53%
1	277	7	10	3.89%	9.58%	31.72%	14.73%	9.36%	22.25%	21.87%	21.23%	24.20%	40.07%	21.97%	20.88%	27.56%
1	289	12	7	4.07%	10.34%	29.22%	17.10%	26.61%	15.59%	28.41%	19.47%	22.75%	42.63%	15.22%	24.46%	13.97%
1	290	7	13	4.08%	8.57%	24.13%	21.16%	10.62%	19.76%	24.87%	22.01%	22.15%	27.95%	19.91%	23.84%	40.47%
1	300	7	13	3.97%	9.36%	31.86%	14.79%	9.29%	22.64%	22.23%	21.08%	22.99%	27.11%	20.04%	24.03%	40.06%
1	325	9	11	3.70%	10.52%	9.10%	30.22%	18.58%	28.51%	21.60%	22.35%	21.34%	20.53%	40.52%	21.64%	21.10%
1	330	7	13	3.89%	10.13%	17.14%	26.55%	15.74%	15.17%	26.59%	20.88%	22.63%	28.46%	19.95%	21.90%	40.44%
1	347	4	8	3.87%	7.65%	14.35%	27.12%	13.27%	30.15%	18.97%	40.53%	26.80%	26.01%	20.69%	22.20%	18.08%
1	373	8	11	3.88%	10.04%	30.47%	16.31%	28.05%	18.31%	25.15%	24.08%	18.96%	11.90%	40.74%	22.87%	18.65%
1	374	6	10	3.91%	10.28%	8.75%	32.99%	15.30%	23.90%	19.88%	17.96%	26.64%	40.96%	26.74%	21.24%	20.89%
1	384	6	11	3.87%	8.98%	27.92%	18.47%	17.70%	23.55%	13.19%	23.93%	32.47%	21.80%	40.30%	16.53%	20.75%
1	397	7	10	3.87%	9.36%	27.90%	18.15%	11.82%	16.08%	24.66%	28.25%	16.15%	28.39%	41.82%	21.49%	21.22%
1	405	7	11	3.99%	9.20%	27.90%	18.15%	14.84%	15.30%	22.54%	21.73%	23.47%	32.23%	40.97%	17.54%	21.64%
1	423	7	10	3.97%	9.48%	30.99%	14.51%	13.91%	21.19%	17.94%	21.21%	29.69%	40.21%	27.17%	21.86%	17.24%
1	424	7	10	3.97%	6.94%	24.65%	22.38%	15.28%	20.35%	18.76%	22.27%	26.97%	40.21%	27.05%	23.87%	16.88%
1	429	6	10	3.89%	9.75%	26.38%	20.16%	13.93%	23.55%	15.48%	24.60%	22.08%	42.06%	19.81%	20.75%	27.02%
1	437	4	7	3.91%	9.19%	17.49%	25.45%	12.76%	19.59%	28.69%	40.47%	25.43%	28.00%	18.52%	23.97%	16.23%
1	475	4	8	3.87%	8.97%	15.76%	25.11%	20.56%	22.16%	28.92%	41.21%	21.06%	20.52%	15.28%	20.14%	25.91%
1	479	7	13	3.97%	9.02%	26.21%	19.44%	15.01%	14.92%	28.31%	27.53%	18.40%	24.53%	19.68%	21.60%	40.67%
1	487	8	11	3.88%	10.04%	30.50%	16.28%	28.04%	18.28%	25.18%	26.06%	9.73%	19.03%	40.95%	21.79%	19.52%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
1	511	6	13	3.89%	9.90%	30.62%	16.09%	18.17%	19.97%	15.49%	20.80%	22.47%	28.79%	20.82%	20.30%	42.08%
1	522	6	10	3.99%	9.79%	30.60%	16.11%	17.38%	24.59%	12.10%	20.27%	23.75%	40.88%	21.51%	20.41%	27.97%
1	529	7	10	3.89%	9.89%	30.59%	15.01%	14.84%	17.30%	20.81%	20.38%	25.01%	40.47%	21.77%	20.65%	28.69%
1	533	9	12	4.04%	10.32%	20.54%	26.04%	26.57%	21.56%	25.02%	20.56%	24.66%	14.15%	13.84%	40.96%	21.37%
1	557	7	11	3.99%	10.35%	28.51%	18.68%	9.18%	22.28%	21.01%	27.10%	23.76%	22.30%	40.49%	21.87%	20.08%
1	576	8	11	3.89%	10.29%	29.23%	17.17%	24.65%	20.16%	26.65%	23.44%	17.45%	14.45%	40.57%	22.14%	19.53%
1	577	4	13	3.88%	10.53%	11.36%	26.46%	14.15%	21.56%	22.17%	22.57%	33.83%	20.20%	18.65%	23.84%	40.25%
1	585	6	11	4.05%	11.68%	33.10%	13.92%	20.84%	22.86%	27.36%	21.90%	21.70%	9.83%	40.87%	21.90%	19.50%
1	586	7	10	3.92%	9.54%	31.74%	13.82%	12.69%	20.90%	19.60%	21.68%	23.34%	42.17%	20.92%	19.90%	29.12%
1	610	5	7	4.02%	10.45%	7.18%	21.90%	21.89%	15.16%	27.91%	40.56%	25.97%	18.75%	27.41%	20.07%	28.31%
1	628	9	12	3.94%	9.97%	30.50%	16.28%	28.82%	20.57%	22.97%	21.84%	26.05%	11.11%	15.79%	40.03%	21.53%
1	635	9	11	3.99%	9.48%	31.17%	15.51%	10.09%	29.21%	18.73%	25.38%	25.44%	16.96%	41.22%	21.76%	20.38%
1	663	8	11	3.87%	10.05%	31.63%	15.15%	24.63%	18.17%	28.16%	23.78%	21.85%	8.74%	41.33%	21.48%	20.52%
1	681	8	11	3.68%	10.37%	27.82%	19.82%	23.64%	26.99%	19.99%	25.43%	18.76%	10.61%	40.28%	24.48%	17.75%
1	703	7	11	3.89%	7.37%	25.88%	22.29%	12.27%	21.41%	22.67%	29.50%	22.72%	15.82%	40.58%	28.39%	17.07%
1	709	4	8	3.92%	9.14%	15.52%	20.40%	27.64%	26.07%	14.58%	40.94%	19.54%	22.44%	22.17%	20.68%	25.88%
1	724	7	13	3.91%	9.27%	27.93%	19.84%	13.31%	14.08%	25.27%	23.44%	23.21%	27.39%	19.68%	22.03%	40.22%
1	740	7	10	3.99%	9.44%	31.94%	14.86%	14.13%	19.77%	17.74%	24.55%	23.06%	41.99%	20.61%	26.28%	20.95%
1	744	7	13	3.88%	7.90%	31.20%	14.90%	18.28%	16.35%	20.40%	24.46%	19.93%	28.17%	19.96%	23.84%	40.25%
1	758	7	11	3.89%	10.03%	31.78%	14.87%	15.88%	15.27%	22.11%	27.90%	18.27%	29.40%	40.57%	23.29%	16.23%
1	759	10	11	3.86%	9.56%	26.64%	20.10%	11.83%	29.11%	22.75%	18.64%	14.38%	27.96%	42.53%	21.88%	20.35%
1	768	4	9	4.28%	10.26%	9.99%	23.28%	22.37%	17.49%	26.77%	18.85%	40.02%	23.64%	19.21%	32.25%	21.23%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
1	777	6	8	3.97%	9.81%	31.73%	14.99%	13.88%	27.79%	12.17%	27.57%	30.79%	20.68%	21.62%	42.33%	12.51%
1	780	6	10	3.97%	9.81%	25.81%	20.59%	13.93%	23.43%	23.61%	15.83%	25.71%	40.82%	20.38%	23.54%	21.95%
1	802	10	11	3.88%	10.53%	6.33%	33.62%	12.79%	27.03%	22.81%	24.42%	27.82%	20.09%	40.78%	22.43%	16.86%
1	804	6	9	3.92%	10.39%	33.50%	14.65%	13.83%	27.79%	25.58%	19.95%	28.20%	17.68%	11.38%	42.02%	20.96%
1	808	11	10	3.89%	10.03%	30.47%	16.31%	29.66%	21.24%	22.79%	20.55%	21.81%	40.28%	24.48%	13.47%	14.44%
1	815	6	11	3.91%	9.66%	26.10%	20.53%	13.93%	23.69%	25.55%	24.37%	21.29%	18.05%	41.37%	23.65%	17.74%
1	817	7	11	3.87%	8.97%	25.84%	21.74%	17.20%	15.41%	20.76%	27.38%	21.65%	24.27%	40.82%	22.30%	19.51%
1	820	9	11	3.99%	9.44%	31.25%	16.14%	11.17%	26.64%	17.07%	26.44%	27.25%	17.59%	41.57%	19.34%	21.50%
1	836	5	10	3.87%	10.33%	27.64%	20.35%	23.90%	13.42%	15.68%	20.36%	23.07%	41.30%	20.47%	21.46%	27.55%
1	845	9	11	3.86%	10.18%	8.93%	32.33%	16.62%	28.88%	21.20%	22.64%	23.30%	18.48%	40.60%	22.47%	20.30%
1	887	10	11	3.89%	10.03%	30.50%	15.24%	30.68%	22.48%	21.30%	8.73%	22.50%	20.81%	40.96%	21.83%	20.52%
1	914	4	8	3.89%	10.31%	9.42%	26.89%	18.01%	22.80%	23.92%	40.28%	21.40%	21.45%	22.78%	27.21%	21.16%
1	944	6	12	4.08%	8.71%	26.41%	19.22%	18.68%	23.29%	13.28%	23.92%	27.25%	20.32%	22.33%	40.86%	21.08%
1	955	9	11	3.91%	11.62%	6.06%	29.47%	19.55%	27.65%	23.09%	21.35%	20.81%	22.98%	40.30%	18.79%	24.26%
1	967	6	11	3.91%	8.47%	27.16%	20.37%	17.41%	26.57%	18.66%	20.66%	26.28%	17.77%	40.70%	21.99%	19.57%
1	971	6	12	3.91%	9.72%	25.70%	20.29%	15.03%	23.60%	22.63%	19.61%	23.91%	17.77%	28.19%	40.32%	18.76%
1	975	12	11	3.87%	7.95%	27.66%	18.53%	10.80%	12.83%	23.08%	28.98%	21.82%	21.15%	40.66%	33.82%	18.07%
1	983	5	8	3.89%	10.41%	9.55%	27.98%	16.96%	20.02%	25.45%	40.96%	20.94%	22.94%	23.91%	26.70%	19.99%
1	984	6	10	3.88%	8.96%	25.83%	21.41%	11.87%	30.08%	15.22%	27.92%	14.21%	40.09%	23.98%	18.51%	27.97%
2	10	7	11	3.97%	8.84%	27.27%	18.06%	11.49%	16.02%	27.25%	22.90%	22.51%	22.16%	40.54%	19.04%	29.30%
2	20	12	11	3.89%	10.30%	7.23%	29.07%	18.01%	27.63%	20.17%	18.44%	26.15%	21.31%	41.51%	24.01%	21.93%
2	27	4	9	4.09%	8.73%	15.84%	26.03%	11.52%	21.95%	22.99%	22.16%	40.70%	18.97%	29.93%	18.93%	27.80%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	28	5	12	3.92%	10.39%	11.10%	24.32%	16.88%	30.21%	17.77%	31.03%	18.49%	22.47%	21.15%	40.45%	21.52%
2	33	4	8	3.88%	10.04%	8.52%	25.20%	19.55%	20.40%	23.94%	40.93%	30.36%	18.47%	27.32%	19.21%	21.86%
2	43	4	8	3.97%	8.89%	15.81%	26.10%	11.45%	26.27%	19.95%	40.31%	21.91%	18.08%	29.91%	18.94%	27.80%
2	59	11	12	3.87%	8.91%	27.27%	18.96%	28.90%	20.68%	23.10%	21.15%	14.61%	15.96%	24.43%	40.33%	21.40%
2	71	5	12	3.89%	10.27%	9.16%	23.00%	21.02%	23.66%	21.87%	30.69%	18.31%	21.86%	23.87%	40.52%	21.72%
2	90	7	12	3.92%	10.11%	27.79%	19.21%	13.20%	24.15%	15.25%	29.77%	18.16%	22.67%	23.20%	41.01%	21.19%
2	91	7	11	3.87%	9.01%	28.41%	16.94%	14.70%	18.84%	21.18%	20.58%	25.02%	40.51%	21.88%	17.64%	30.87%
2	96	9	10	3.88%	10.04%	27.40%	18.70%	11.75%	20.43%	23.11%	25.08%	17.41%	40.20%	24.26%	17.72%	29.70%
2	102	5	12	3.91%	11.76%	5.60%	22.35%	22.62%	23.49%	23.34%	30.69%	18.10%	22.71%	23.16%	41.03%	21.28%
2	116	5	12	3.88%	10.54%	8.54%	24.82%	17.75%	29.24%	19.97%	30.31%	20.25%	22.93%	19.74%	40.00%	21.87%
2	121	5	12	3.91%	11.67%	7.08%	23.74%	21.03%	23.67%	21.88%	30.66%	18.16%	22.69%	23.19%	40.66%	21.57%
2	123	5	12	3.87%	11.63%	6.89%	24.86%	19.09%	24.10%	22.64%	30.86%	17.96%	22.71%	23.19%	41.22%	21.09%
2	125	7	11	3.89%	8.88%	27.30%	18.40%	14.25%	17.92%	22.28%	23.08%	23.03%	21.70%	40.30%	19.06%	29.40%
2	128	10	12	3.92%	10.27%	8.71%	31.60%	17.02%	29.19%	20.22%	23.19%	20.33%	20.79%	22.27%	40.91%	21.38%
2	130	5	12	3.89%	10.38%	8.03%	30.93%	11.29%	32.87%	19.08%	24.54%	22.89%	17.48%	23.81%	40.33%	24.35%
2	147	7	12	3.88%	10.04%	27.37%	17.20%	14.32%	17.30%	23.06%	30.25%	18.12%	22.61%	23.21%	40.42%	21.78%
2	156	11	12	3.89%	8.89%	27.31%	18.92%	27.09%	20.07%	22.96%	20.65%	11.21%	15.62%	32.02%	40.09%	20.69%
2	157	9	10	3.91%	11.63%	7.44%	31.54%	18.45%	20.46%	22.42%	23.13%	20.50%	40.26%	24.17%	16.45%	29.60%
2	170	7	12	3.97%	9.94%	32.09%	15.81%	10.40%	17.62%	25.17%	28.32%	18.16%	22.71%	23.16%	40.38%	21.88%
2	183	7	11	3.97%	9.94%	27.30%	17.52%	15.92%	17.19%	20.89%	23.18%	23.11%	21.60%	40.62%	19.04%	29.32%
2	186	10	12	3.91%	10.30%	8.77%	31.56%	18.23%	28.55%	19.16%	23.00%	21.02%	19.62%	23.39%	40.76%	21.55%
2	192	9	12	3.89%	8.88%	27.30%	18.93%	30.87%	19.36%	22.44%	21.28%	23.32%	14.93%	16.70%	40.70%	21.09%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

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BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	195	4	13	3.91%	11.69%	6.91%	18.14%	26.55%	20.95%	22.59%	18.87%	30.98%	27.45%	17.81%	23.99%	40.12%
2	202	6	10	3.87%	8.69%	24.19%	21.16%	14.86%	24.71%	16.01%	23.04%	23.00%	41.88%	21.26%	17.42%	29.61%
2	225	10	12	3.89%	10.03%	9.37%	31.22%	17.73%	28.80%	19.92%	20.03%	24.59%	24.01%	18.06%	40.04%	21.91%
2	226	5	9	4.05%	11.73%	8.16%	23.43%	29.27%	11.02%	22.83%	20.58%	42.02%	19.45%	28.78%	20.03%	28.32%
2	229	7	12	3.89%	7.28%	28.95%	18.02%	12.10%	24.08%	19.64%	29.48%	18.17%	21.85%	23.86%	40.88%	21.40%
2	248	5	8	3.89%	10.52%	8.78%	24.75%	20.19%	23.38%	23.60%	40.12%	21.52%	18.19%	29.85%	26.43%	18.62%
2	260	7	12	3.88%	10.04%	32.09%	16.70%	10.67%	17.78%	24.81%	26.88%	18.57%	22.70%	23.18%	40.24%	21.97%
2	267	7	10	3.89%	10.03%	27.33%	17.22%	14.34%	17.18%	23.57%	22.31%	23.11%	40.60%	21.70%	18.97%	29.29%
2	271	5	12	3.89%	11.55%	13.32%	20.79%	17.03%	30.21%	17.78%	31.01%	18.50%	22.66%	21.27%	40.16%	21.54%
2	283	5	12	3.91%	11.61%	6.83%	25.04%	18.88%	23.48%	23.32%	30.67%	18.14%	22.72%	23.16%	40.99%	21.23%
2	291	6	11	4.10%	9.82%	28.68%	14.77%	15.98%	19.32%	22.82%	20.46%	22.75%	22.03%	40.30%	18.89%	29.64%
2	293	11	12	3.88%	8.94%	27.29%	18.89%	29.19%	20.40%	23.10%	20.95%	23.44%	9.45%	22.04%	40.02%	21.91%
2	297	7	12	3.88%	10.16%	27.79%	19.06%	8.53%	22.60%	22.99%	28.24%	18.75%	22.75%	22.60%	41.42%	20.79%
2	303	5	13	3.91%	11.61%	7.46%	30.21%	12.27%	23.81%	22.72%	19.09%	27.62%	30.83%	18.20%	21.38%	40.85%
2	314	10	11	3.87%	9.23%	28.19%	16.85%	11.15%	21.30%	22.34%	21.82%	26.44%	18.58%	40.52%	18.14%	31.12%
2	317	12	9	3.89%	8.96%	10.35%	12.52%	28.64%	27.40%	20.14%	29.70%	21.91%	21.46%	17.31%	26.76%	40.45%
2	328	7	12	3.89%	10.03%	28.51%	16.02%	17.36%	13.62%	23.40%	30.64%	18.15%	22.71%	23.17%	41.06%	21.25%
2	337	5	12	3.89%	10.73%	10.77%	25.33%	15.01%	32.83%	16.82%	29.84%	19.96%	22.93%	19.77%	40.82%	21.03%
2	352	9	11	3.97%	8.80%	27.34%	18.89%	31.31%	19.86%	24.23%	17.72%	22.59%	14.99%	40.49%	23.29%	16.15%
2	356	4	8	3.88%	8.93%	15.87%	24.11%	23.18%	22.46%	40.32%	22.56%	17.60%	31.66%	13.41%	17.63%	27.80%
2	368	12	9	3.89%	10.42%	8.66%	31.57%	17.00%	29.30%	17.86%	20.63%	41.52%	21.37%	24.03%	20.05%	23.55%
2	378	7	12	3.89%	10.03%	28.51%	16.04%	17.40%	13.57%	23.89%	30.14%	18.29%	21.88%	23.84%	40.70%	21.57%

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Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	385	7	12	3.88%	8.99%	28.33%	17.02%	11.94%	15.81%	26.53%	30.15%	18.71%	22.69%	23.19%	40.53%	21.74%
2	400	5	12	3.89%	10.52%	11.13%	24.77%	15.58%	23.09%	19.16%	29.88%	28.03%	20.32%	21.09%	40.46%	21.79%
2	422	9	12	3.97%	7.63%	25.14%	21.16%	11.09%	12.78%	27.09%	23.55%	20.73%	40.41%	23.73%	21.31%	31.08%
2	429	8	11	3.97%	8.85%	27.27%	18.92%	29.65%	13.68%	27.33%	27.05%	12.76%	20.44%	23.91%	14.67%	40.84%
2	440	10	12	3.97%	10.25%	8.09%	32.11%	16.64%	27.84%	18.84%	19.53%	24.82%	18.28%	26.68%	41.46%	21.24%
2	450	7	12	3.89%	10.42%	8.45%	31.26%	17.33%	29.02%	17.31%	26.77%	21.18%	23.94%	18.09%	40.29%	21.93%
2	467	6	12	3.89%	9.30%	27.94%	18.62%	15.95%	21.44%	31.23%	20.21%	19.45%	24.56%	14.52%	40.55%	21.78%
2	471	9	12	3.87%	8.90%	27.32%	18.91%	28.90%	20.70%	23.08%	21.02%	23.14%	11.95%	19.97%	40.50%	21.21%
2	478	13	11	4.10%	9.84%	8.84%	31.73%	18.23%	27.98%	20.16%	23.21%	19.63%	21.14%	41.19%	21.41%	22.31%
2	500	10	12	3.91%	10.28%	7.07%	26.24%	21.06%	31.48%	22.09%	22.12%	20.89%	23.17%	22.55%	40.68%	18.35%
2	502	7	10	3.89%	8.98%	28.34%	17.05%	12.77%	23.22%	17.33%	24.28%	22.55%	40.72%	21.38%	17.92%	31.08%
2	503	4	13	3.92%	11.54%	7.03%	18.94%	25.82%	20.35%	26.60%	40.13%	28.27%	20.74%	27.61%	18.05%	20.67%
2	507	6	12	4.07%	10.34%	29.78%	17.14%	18.15%	24.91%	28.13%	18.52%	22.97%	21.68%	11.92%	40.84%	21.19%
2	523	4	13	3.89%	10.69%	7.76%	24.54%	20.35%	20.41%	23.74%	30.66%	30.47%	18.43%	19.21%	19.32%	40.11%
2	538	5	11	3.92%	11.54%	10.46%	24.61%	16.02%	29.65%	18.24%	28.85%	21.32%	25.65%	40.49%	20.79%	18.12%
2	541	7	12	3.87%	10.05%	32.09%	15.82%	10.10%	19.80%	23.80%	27.02%	19.39%	22.75%	22.61%	41.08%	21.21%
2	548	4	7	3.89%	8.95%	16.41%	25.13%	18.15%	28.24%	40.82%	26.74%	18.67%	15.46%	28.08%	17.83%	21.19%
2	550	5	12	3.92%	10.31%	7.02%	23.21%	21.31%	24.95%	21.66%	30.82%	18.24%	21.25%	24.92%	41.25%	21.03%
2	557	7	10	3.97%	8.90%	28.36%	16.97%	16.03%	15.91%	21.19%	26.40%	23.14%	40.58%	19.50%	18.45%	30.30%
2	562	7	12	3.88%	9.01%	28.34%	16.92%	13.66%	20.52%	21.31%	29.17%	19.07%	22.67%	22.60%	40.89%	21.44%
2	563	5	12	3.88%	10.39%	7.05%	23.60%	21.26%	23.50%	23.31%	30.67%	18.27%	21.88%	23.87%	40.77%	21.50%
2	565	5	12	3.89%	10.01%	8.18%	23.15%	22.13%	26.98%	20.89%	28.17%	18.19%	19.74%	27.31%	40.09%	21.03%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	574	7	10	3.87%	10.08%	30.72%	16.59%	9.25%	21.20%	23.31%	22.83%	22.84%	40.08%	22.14%	19.13%	27.47%
2	575	6	10	3.88%	10.44%	15.11%	31.90%	14.97%	13.76%	22.94%	22.91%	22.53%	41.78%	21.84%	16.90%	30.66%
2	580	7	10	3.89%	8.89%	27.37%	18.21%	16.35%	16.75%	21.90%	21.27%	26.75%	40.05%	20.35%	18.29%	29.42%
2	596	5	12	3.92%	10.31%	6.76%	22.57%	22.69%	23.42%	23.37%	30.04%	18.72%	22.70%	23.17%	41.47%	20.87%
2	603	13	7	3.88%	10.31%	8.65%	24.41%	21.05%	23.24%	40.03%	19.58%	29.45%	23.35%	17.11%	29.31%	19.50%
2	604	5	12	4.11%	10.45%	9.88%	26.53%	15.08%	25.94%	20.72%	30.82%	18.31%	21.86%	23.85%	40.96%	21.35%
2	606	7	13	3.89%	10.37%	29.15%	17.52%	13.67%	18.84%	28.55%	22.09%	15.57%	29.90%	15.89%	23.86%	40.23%
2	620	12	11	3.91%	9.99%	9.43%	32.92%	16.22%	30.24%	21.38%	22.28%	18.99%	21.90%	40.09%	22.33%	20.03%
2	629	7	12	3.88%	9.00%	28.36%	16.98%	14.69%	21.24%	18.76%	30.88%	18.33%	20.01%	25.12%	40.06%	22.12%
2	632	5	12	3.87%	10.33%	8.52%	23.01%	22.76%	20.37%	24.81%	30.35%	17.83%	20.57%	26.71%	40.13%	20.70%
2	644	10	13	3.87%	9.33%	14.23%	24.54%	23.55%	22.88%	27.29%	19.14%	16.68%	26.14%	19.99%	21.58%	40.25%
2	670	5	12	3.92%	10.27%	11.12%	25.05%	16.52%	29.26%	18.32%	30.70%	19.44%	23.04%	18.41%	42.05%	21.77%
2	674	5	12	3.89%	10.01%	8.33%	25.34%	18.20%	30.16%	18.78%	28.44%	19.79%	22.91%	22.33%	40.88%	20.86%
2	676	12	9	3.88%	10.28%	7.05%	26.26%	21.05%	30.78%	17.67%	21.73%	40.59%	24.04%	21.00%	20.21%	25.34%
2	696	7	10	3.88%	10.04%	27.35%	17.47%	11.25%	15.73%	26.92%	23.19%	23.10%	40.35%	21.89%	19.46%	28.80%
2	698	7	12	3.86%	9.16%	28.09%	18.63%	8.27%	27.34%	18.59%	28.13%	19.97%	22.91%	22.38%	40.86%	21.42%
2	712	5	12	3.89%	10.69%	7.12%	22.04%	22.47%	23.44%	23.30%	30.68%	18.29%	19.35%	26.38%	40.51%	21.65%
2	721	4	7	3.97%	8.86%	15.09%	24.98%	21.69%	23.49%	40.60%	23.31%	16.16%	30.84%	27.58%	18.45%	14.48%
2	722	12	11	3.91%	10.36%	9.08%	32.48%	16.35%	28.86%	21.02%	22.37%	17.58%	23.45%	40.71%	25.37%	18.27%
2	735	5	12	4.08%	10.22%	10.99%	25.84%	15.23%	31.09%	17.59%	30.57%	18.50%	22.47%	21.17%	40.29%	21.72%
2	736	7	12	3.88%	10.04%	27.32%	17.52%	15.39%	17.22%	21.89%	29.51%	21.34%	22.46%	21.49%	40.58%	20.99%
2	746	10	12	3.86%	11.67%	6.03%	29.02%	18.00%	30.85%	19.59%	21.86%	21.84%	21.56%	23.89%	40.44%	21.36%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	754	7	12	4.08%	9.82%	28.34%	18.91%	8.95%	21.78%	21.78%	29.15%	18.89%	21.86%	23.85%	41.34%	20.96%
2	763	6	10	3.91%	11.78%	28.38%	18.84%	17.92%	25.24%	21.27%	22.28%	10.74%	40.11%	23.12%	17.95%	28.16%
2	772	7	10	3.89%	10.02%	27.35%	17.19%	17.35%	13.61%	22.35%	23.91%	22.52%	40.42%	21.83%	18.76%	30.50%
2	790	7	13	3.97%	9.94%	8.56%	32.17%	18.29%	28.38%	23.10%	21.38%	21.25%	22.07%	40.64%	19.26%	20.70%
2	798	7	11	3.89%	8.96%	28.39%	16.91%	17.17%	14.05%	23.22%	22.68%	23.03%	21.97%	40.12%	19.02%	30.29%
2	804	7	11	3.89%	10.03%	21.05%	23.57%	13.91%	23.16%	19.40%	20.40%	22.96%	23.82%	40.17%	17.63%	29.71%
2	809	4	10	3.91%	11.61%	8.45%	16.63%	26.62%	20.87%	22.59%	33.55%	16.09%	40.46%	21.34%	19.64%	27.90%
2	825	4	13	3.89%	10.37%	8.63%	24.17%	20.11%	20.94%	22.62%	19.09%	29.85%	28.46%	17.61%	23.77%	40.32%
2	828	8	10	3.89%	10.53%	8.40%	31.73%	18.41%	13.91%	29.40%	20.00%	23.58%	40.01%	21.86%	18.61%	29.66%
2	835	7	12	3.91%	10.36%	29.13%	17.26%	14.12%	26.75%	13.31%	28.20%	18.44%	21.88%	23.86%	40.82%	21.45%
2	848	7	10	3.89%	10.19%	33.35%	14.48%	11.06%	16.05%	25.45%	21.72%	23.35%	40.63%	22.28%	17.44%	29.72%
2	881	7	12	3.88%	10.04%	32.09%	14.50%	11.75%	22.02%	19.47%	29.17%	18.57%	22.69%	23.20%	41.09%	21.21%
2	912	10	12	3.91%	11.63%	5.75%	26.30%	21.03%	29.34%	20.39%	22.98%	20.99%	23.98%	21.80%	40.11%	21.69%
2	915	7	11	3.87%	10.04%	27.36%	17.19%	12.58%	15.09%	26.41%	23.05%	24.05%	21.37%	40.80%	20.42%	27.27%
2	918	7	11	3.87%	10.05%	28.56%	16.02%	17.33%	13.62%	22.06%	23.86%	23.04%	20.96%	41.24%	18.88%	30.28%
2	922	11	12	3.86%	10.37%	8.57%	31.75%	18.45%	28.41%	19.20%	22.69%	20.47%	20.86%	22.77%	41.22%	21.17%
2	924	7	12	3.91%	10.26%	28.37%	18.26%	13.83%	26.49%	13.90%	27.96%	18.34%	22.70%	23.19%	40.01%	22.22%
2	933	7	10	3.88%	8.99%	28.38%	17.00%	11.93%	15.71%	27.69%	22.22%	23.10%	40.46%	21.79%	20.62%	27.63%
2	939	5	8	3.89%	10.70%	7.26%	23.16%	20.76%	20.08%	26.57%	40.17%	21.64%	18.28%	30.44%	20.67%	26.27%
2	940	5	12	3.89%	10.02%	10.50%	28.72%	11.44%	32.75%	19.88%	27.51%	17.95%	22.48%	15.95%	40.37%	28.10%
2	946	10	13	3.89%	8.89%	27.33%	18.91%	29.45%	13.83%	27.43%	14.92%	16.82%	22.74%	40.83%	22.11%	22.25%
2	948	5	12	3.91%	11.69%	9.75%	25.87%	15.05%	31.18%	17.20%	30.37%	19.15%	22.47%	21.08%	40.19%	21.88%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

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BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
2	958	5	12	3.89%	10.47%	8.09%	22.04%	21.30%	25.08%	21.54%	30.98%	19.64%	22.89%	22.33%	40.57%	21.15%
2	965	5	12	3.91%	11.61%	9.91%	25.76%	15.43%	30.19%	17.81%	30.36%	19.14%	22.49%	21.19%	41.47%	20.58%
2	978	7	10	3.88%	10.07%	8.16%	32.37%	17.75%	20.49%	23.29%	23.68%	22.70%	42.04%	20.05%	18.03%	27.28%
2	991	7	10	3.88%	10.04%	27.35%	17.49%	11.38%	16.01%	26.93%	21.33%	26.91%	41.08%	19.32%	18.30%	29.41%
2	992	9	12	3.89%	8.89%	27.32%	18.90%	30.96%	19.87%	22.66%	20.78%	22.31%	20.98%	10.71%	41.17%	21.17%
2	997	9	12	3.94%	8.71%	24.29%	20.96%	11.69%	13.47%	28.43%	16.01%	28.12%	40.03%	21.58%	22.21%	30.16%
3	19	11	12	3.89%	8.88%	27.28%	18.97%	28.73%	20.86%	23.91%	14.27%	20.80%	21.85%	19.32%	41.21%	19.57%
3	52	7	11	3.89%	8.93%	27.27%	18.26%	17.35%	16.99%	19.85%	23.63%	22.10%	22.22%	40.66%	31.41%	17.01%
3	68	12	7	3.87%	9.18%	16.95%	13.38%	20.42%	22.48%	40.22%	24.62%	16.46%	29.63%	26.13%	24.04%	22.45%
3	83	6	13	3.91%	11.71%	32.95%	14.22%	17.19%	25.14%	19.24%	24.87%	9.32%	40.48%	27.73%	18.57%	24.12%
3	88	11	12	3.86%	10.44%	8.67%	31.56%	18.37%	24.11%	16.24%	27.61%	21.68%	19.17%	26.35%	41.60%	19.91%
3	91	4	11	3.88%	10.98%	7.44%	24.87%	21.33%	20.67%	23.88%	29.25%	17.34%	21.56%	40.77%	29.58%	18.28%
3	106	4	8	3.91%	11.55%	6.42%	18.76%	26.55%	21.15%	23.20%	40.54%	29.87%	30.49%	19.19%	19.38%	18.65%
3	117	3	12	3.87%	9.25%	18.84%	24.17%	12.57%	26.80%	28.00%	18.72%	29.34%	22.28%	19.80%	42.27%	13.88%
3	118	13	12	3.91%	11.01%	5.80%	27.80%	18.86%	28.98%	14.94%	27.51%	28.11%	21.28%	20.17%	43.64%	17.86%
3	148	11	12	3.89%	10.03%	28.51%	16.06%	11.59%	13.58%	29.59%	33.47%	21.32%	17.15%	25.44%	42.01%	16.76%
3	153	5	11	3.89%	11.56%	6.21%	22.80%	20.96%	20.42%	24.13%	32.16%	14.29%	21.29%	40.53%	21.35%	30.02%
3	171	4	13	3.91%	10.67%	7.87%	18.14%	26.54%	20.87%	22.66%	28.35%	21.43%	27.86%	19.66%	21.23%	40.62%
3	175	6	12	3.89%	9.33%	27.90%	18.63%	20.59%	23.02%	15.30%	22.51%	29.29%	19.38%	23.73%	43.32%	12.74%
3	185	6	13	3.88%	10.30%	29.26%	12.15%	20.78%	21.73%	22.34%	22.86%	15.82%	28.97%	19.74%	21.74%	40.10%
3	198	7	13	3.86%	10.52%	22.68%	24.28%	14.59%	25.02%	19.94%	23.79%	31.18%	9.18%	41.20%	18.40%	25.08%
3	199	5	10	3.88%	11.66%	7.42%	30.17%	12.45%	22.84%	21.92%	27.20%	19.46%	40.41%	21.75%	20.99%	29.57%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

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BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
3	200	13	12	3.88%	8.90%	10.52%	13.02%	30.20%	20.48%	18.51%	27.28%	20.96%	31.07%	18.02%	41.03%	25.72%
3	202	6	11	3.88%	10.38%	29.26%	17.15%	21.55%	22.07%	21.58%	23.33%	23.29%	23.68%	20.30%	42.95%	10.20%
3	212	4	9	3.89%	9.05%	18.81%	23.64%	12.21%	23.45%	20.31%	21.29%	40.57%	27.58%	18.10%	21.12%	29.64%
3	244	9	4	3.89%	9.04%	11.06%	24.79%	40.61%	21.26%	26.70%	20.79%	30.50%	13.28%	17.51%	25.97%	23.95%
3	252	4	9	3.89%	10.73%	8.15%	24.32%	19.23%	21.23%	23.06%	21.25%	41.22%	28.27%	20.60%	20.49%	27.26%
3	264	5	8	3.89%	10.69%	8.78%	27.78%	15.34%	22.78%	21.39%	40.61%	23.37%	28.11%	20.90%	26.62%	19.37%
3	275	4	8	3.89%	10.77%	7.71%	18.24%	26.49%	20.50%	22.64%	41.37%	20.51%	33.55%	16.09%	27.12%	20.59%
3	291	10	13	3.89%	8.75%	24.26%	20.96%	10.91%	13.36%	27.69%	30.65%	16.71%	27.54%	40.82%	22.08%	21.91%
3	302	5	11	3.89%	10.03%	8.76%	20.64%	21.80%	28.29%	28.10%	20.87%	24.44%	18.56%	40.01%	22.92%	21.40%
3	330	6	12	3.87%	10.16%	26.25%	20.28%	20.20%	22.21%	23.59%	22.75%	26.33%	21.63%	17.17%	41.20%	13.89%
3	375	13	11	3.97%	8.80%	27.32%	18.92%	30.49%	13.12%	28.27%	15.64%	14.88%	20.47%	24.15%	40.06%	23.49%
3	387	10	11	3.91%	10.35%	20.81%	25.77%	17.39%	18.59%	25.80%	10.15%	25.93%	25.48%	40.32%	19.03%	25.85%
3	407	10	11	3.91%	8.67%	24.38%	20.96%	11.01%	22.59%	22.51%	29.68%	16.70%	27.20%	40.61%	19.26%	21.99%
3	428	6	11	3.88%	9.01%	28.34%	16.92%	11.41%	31.23%	12.46%	22.46%	22.97%	22.18%	41.15%	29.76%	17.79%
3	430	9	12	3.88%	10.03%	29.04%	17.96%	13.51%	26.13%	17.48%	11.63%	25.36%	40.40%	30.52%	24.15%	19.46%
3	438	4	9	4.03%	11.74%	8.07%	17.50%	24.48%	22.75%	21.75%	21.19%	40.75%	29.44%	19.56%	26.56%	21.85%
3	464	5	11	3.91%	11.44%	10.07%	25.78%	14.66%	32.41%	16.84%	31.59%	13.73%	30.13%	40.01%	21.90%	17.26%
3	472	11	8	3.97%	10.06%	26.24%	20.27%	10.18%	17.15%	28.23%	42.31%	21.99%	24.96%	28.54%	15.32%	20.19%
3	495	5	10	3.89%	10.34%	7.59%	21.56%	22.09%	21.43%	22.79%	27.58%	21.34%	41.13%	21.06%	28.04%	20.86%
3	506	4	10	3.86%	8.35%	10.92%	26.42%	18.80%	22.52%	21.05%	26.74%	21.54%	40.79%	18.64%	28.00%	21.61%
3	554	7	11	3.94%	7.23%	28.96%	16.37%	13.33%	22.01%	19.54%	22.66%	24.62%	40.27%	19.86%	20.98%	29.70%
3	572	7	11	3.97%	8.88%	28.36%	17.05%	15.94%	15.13%	23.02%	22.91%	23.03%	21.80%	40.25%	19.02%	30.29%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Chen District Plan Simulations:

Percent Black Voting Age Population (BVAP) by District for Plans with At Least One 40%+ BVAP District (262 plans found)

Simulation Run	District Plan	Adams District	Butterfield District	District												
				1	2	3	4	5	6	7	8	9	10	11	12	13
3	588	10	13	3.89%	8.89%	27.30%	18.93%	14.35%	27.14%	21.91%	24.21%	12.37%	20.14%	29.86%	20.17%	40.34%
3	639	5	8	3.91%	11.61%	5.90%	22.73%	21.55%	20.43%	24.28%	40.94%	21.81%	19.98%	28.40%	18.68%	29.62%
3	676	3	8	3.92%	8.96%	18.94%	23.92%	17.86%	17.07%	30.09%	40.43%	24.67%	26.96%	20.58%	18.10%	18.41%
3	677	5	12	3.89%	9.28%	27.94%	18.60%	19.65%	23.90%	26.17%	26.12%	21.47%	21.24%	21.01%	40.34%	10.27%
3	678	13	12	3.87%	10.71%	6.11%	12.87%	24.45%	22.55%	21.42%	25.92%	33.87%	20.34%	19.56%	40.59%	27.37%
3	693	5	12	3.89%	10.69%	10.70%	24.50%	16.40%	31.22%	17.22%	31.05%	18.61%	22.72%	21.08%	40.88%	20.78%
3	706	5	11	3.97%	9.94%	8.18%	18.78%	24.60%	26.37%	21.22%	30.42%	18.59%	20.54%	40.82%	24.97%	21.28%
3	721	7	13	3.87%	7.30%	28.99%	18.16%	11.95%	23.90%	18.63%	22.25%	22.66%	40.04%	29.98%	17.50%	24.41%
3	755	12	11	3.86%	7.91%	12.13%	26.94%	20.58%	28.88%	21.33%	23.26%	21.51%	18.64%	40.13%	26.81%	17.60%
3	757	7	11	3.89%	10.02%	32.07%	15.68%	12.31%	16.92%	23.58%	20.71%	23.88%	21.86%	40.46%	20.91%	27.17%
3	772	7	13	3.89%	10.03%	27.33%	17.51%	16.69%	16.41%	21.24%	22.97%	25.80%	40.11%	29.43%	17.70%	20.41%
3	775	7	10	3.93%	8.94%	28.34%	16.94%	11.99%	17.06%	24.89%	24.77%	40.51%	21.39%	28.19%	21.64%	20.56%
3	789	6	10	3.87%	10.31%	29.15%	17.35%	22.55%	21.16%	24.22%	22.97%	21.25%	20.74%	24.67%	41.21%	10.27%
3	797	5	12	3.97%	9.14%	10.72%	25.78%	18.88%	23.04%	21.35%	26.10%	24.29%	29.99%	20.64%	43.27%	12.74%
3	861	12	7	3.87%	8.80%	24.28%	20.97%	11.10%	20.79%	41.28%	25.77%	20.94%	19.56%	27.86%	31.08%	13.32%
3	950	6	10	3.97%	9.28%	28.78%	18.69%	12.82%	24.88%	21.12%	23.94%	14.05%	40.48%	21.37%	20.68%	29.35%
3	960	7	10	3.88%	10.04%	27.34%	17.49%	17.08%	13.58%	22.07%	21.08%	23.92%	40.81%	21.31%	20.99%	29.99%
3	962	7	11	3.89%	8.98%	28.38%	17.01%	14.67%	16.90%	22.48%	21.15%	22.97%	20.47%	41.36%	21.08%	30.21%
3	994	7	11	3.89%	8.98%	28.34%	17.03%	11.93%	15.82%	26.92%	20.61%	24.00%	21.11%	41.38%	27.77%	21.58%
3	998	4	12	3.87%	9.24%	17.65%	25.37%	25.56%	18.77%	26.15%	26.02%	20.73%	21.60%	21.57%	40.29%	12.76%

District plans based on census block assignments provided by Chen, file date 2/7/2017.

Incumbent residence information as provided by Chen.

All BVAP percentages of 30% or greater are highlighted.

BVAP percentages based on 2010 census values for single race black population.

Exhibit 5

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19 CVS 12667

REBECCA HARPER, *et al.*

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, *et al.*

Defendants.

NOTICE OF FILING OF NOTICE OF REMOVAL

TO: The Honorable Blair Williams
Clerk of Superior Court of Wake County
316 Fayetteville Street
Raleigh, NC 27601

PLEASE TAKE NOTICE that Defendants have on this 14th day of October, 2019 removed this case to the United States District Court for the Eastern District of North Carolina, and that the state court may proceed no further regarding the above-captioned case. Attached hereto is a true and correct copy of Legislative Defendants' Notice of Removal filed in the United States District Court for the Eastern District of North Carolina.

To acknowledge receipt of the filing of this Notice to State Court of Removal and Notice of Removal, please sign and return the enclosed Acknowledgment of Filing.

DATED this the 14th day of October, 2019.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: 
Phillip J. Strach (N.C. Bar No. 29456)

Michael D. McKnight (N.C. Bar No.: 36932)
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
Phil.strach@ogletree.com
Michael.mcknight@ogletree.com
Attorneys for Legislative Defendants

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure:

Burton Craige,
Narendra K. Ghosh
Paul E. Smith
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Chapel Hill, NC 27517
(919) 942-5200

Counsel for Plaintiffs

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Abha Khanna
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Seattle, WA 98101-3099
(206) 359-8000

Counsel for Plaintiffs

This, the 14th day of October, 2019

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.



Phillip J. Strach

N.C. State Bar No. 29456
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Attorneys for Legislative Defendants

ACKNOWLEDGEMENT OF FILING

Receipt of Defendants Notice to State Court of Filing of Removal and a copy of the Notice of Removal in the above-entitled action is hereby acknowledged:

This _____ day of _____, 2019.

Clerk/Assistant/Deputy Clerk
Wake County Superior Court

36710014.1

Exhibit 6

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

REBECCA HARPER, et al.

(b) County of Residence of First Listed Plaintiff WAKE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Burton Craige, Patterson Harkavy, LLP., 100 Europa Dr., Suite 420,
Chapel Hill, NC 27517; R. Stanton Jones, Arnold and Porter, LLP., 601
Massachusetts Ave., NW Washington DC, 2001 (202)954-5000

DEFENDANTS

REPRESENTATIVE DAVID R. LEWIS, in his official capacity..., et al.

County of Residence of First Listed Defendant WAKE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Phil Strach, Thomas Farr, Michael McKnight, Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 4208 Six Forks
Road, Suite 1100, Raleigh, NC 27609 (919) 789-9700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1443(2)

Brief description of cause:
Plaintiffs challenge North Carolina's Congressional Districts

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/14/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

No. _____

REBECCA HARPER, et al.

Plaintiff(s),

v.

REPRESENTATIVE DAVID R. LEWIS, IN HIS
OFFICIAL CAPACITY AS SENIOR CHAIR OF THE
HOUSE STANDING COMMITTEE ON
REDISTRIBUTING
Defendant(s).

**SUPPLEMENTAL REMOVAL COVER
SHEET**

The removing party must complete this Supplemental Removal Cover Sheet and comply with Local Civil Rule 5.3. Attach separate sheets as necessary to provide complete responses.

Section A—Plaintiffs

List the full name of each plaintiff from the state court action and indicate whether the plaintiff is pending (i.e., in case currently), dismissed, or otherwise terminated at the time of removal. If dismissed or terminated, indicate the date of dismissal/termination

Full Name of Plaintiff	Pending at time of removal – Yes/No?	Dismissed or terminated? Yes/No?	Date of Dismissal or Termination
Rebecca Harper	Yes	No	
Amy Clare Oseroff	Yes	No	
Donald Rumph	Yes	No	
John Balla	Yes	No	
Please see pg. 5 "Additional Plaintiffs"			

Section B—Defendants

List the full name of each defendant from the state court action and indicate whether the defendant is pending, dismissed or otherwise terminated at the time of removal. If dismissed or terminated, indicate the date of dismissal/termination. If known, indicate if and when each defendant was served with process and whether the defendant joins in the removal.

Full Name of Defendant	Pending at time of removal? Yes/No?	Dismissed or terminated? Yes/No? (If yes, state date of termination)	Has defendant been served with process? Yes/No/Unknown?	If served with process, date of service?	Does the defendant join in removal? Yes/No?
Rep. David R. Lewis, in his official capacity as Sr. Chair of the House Select Committee on Redistricting	Yes	No	Yes	09/30/2019	Yes
Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting	Yes	No	Yes	09/30/2019	Yes
Warren Daniel, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting	Yes	No	Yes	09/30/2019	Yes
Paul Newton, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting	Yes	No	Yes	09/30/2019	Yes
Speaker of the North Carolina House of Representatives Timothy K. Moore	Yes	No	Yes	09/30/2019	Yes
Please see "Additional Defendants" on pg 5					

Section C—Removal pursuant to 28 U.S.C. § 1442(d)(1)

Is only part of the state court action being removed pursuant to 28 U.S.C. § 1442(d)(1)?

Yes ☐ No ☒

If "Yes," specify what portion of the state court action is being removed, and then proceed to the signature page. If "No," proceed to Section D.

Section D—Pending State Court Motions as of Date of Removal

Is there currently a temporary restraining order or preliminary injunction in place in this action from state court? Yes ☐ No ☒

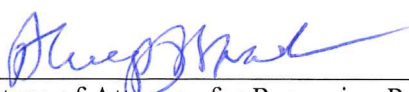
List every known motion pending at the time of removal. Indicate the name of the filer, the date of filing, whether the motion has a supporting memorandum, and whether the motion is time sensitive, such as a motion for preliminary injunction.

Title of Pending Motion	Name of Filer	Date of Filing	Memorandum-- Yes/No?	Time sensitive? Yes/No?
Motion for a Preliminary Injunction	Plaintiffs	09/30/2019	Yes (included in Motion)	Yes
Motion to Intervene	Proposed Interveners	10/09/2019	Yes (included in Motion)	No

Section E—Scheduled State Court Hearings as of Date of Removal

Date and Time of Hearing	Hearing Type	Assigned State Court Judge
10/24/2019 at 10:00 AM	Hearing on Motion to Intervene and Plaintiff's Motion for a Preliminary Injunction	Judges Ridgeway, Crosswhite, and Hinton

Date: 10/14/2019


Signature of Attorney for Removing Party or
Unrepresented Removing Party

Printed Name Phillip J. Strach

Law Firm Ogletree Deakins

Address 4208 Six Forks Road, Suite 1100

Raleigh, NC 27609

Telephone Number 919-789-9700

Fax Number 979-783-9412

Email Address: phil.strach@ogletree.com

State Bar No. 29456

Additional Plaintiffs

Full Name of Plaintiff	Pending at time of removal Yes/No?	Dismissed or Terminated? Yes/No?	Date of Dismissal or Termination
Richard R. Crews	Yes	No	
Lily Nicole Quick	Yes	No	
Gettys Cohen, Jr.	Yes	No	
Shawn Rush	Yes	No	
Jackson Thomas Dunn Jr.	Yes	No	
Mark S. Peters	Yes	No	
Joseph Thomas Gates	Yes	No	
Kathleen Barnes	Yes	No	
Virginia Walters Brien	Yes	No	
David Dwight Brown	Yes	No	

Additional Defendants

Full Name of Defendant	Pending at time of removal? Yes/No?	Dismissed or Terminated? Yes/No? (if Yes, state date of termination)	Has Defendant been served with process? Yes/No/Unknown?	If served with process, date of service?	Does the Defendant join in removal? Yes/No?
President Pro Tempore of the North Carolina Senate Philip E. Berger	Yes	No	Yes	9/30/2019	Yes
The North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown
Damon Circosta, in his official capacity as Chairman of the North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown
Stella Anderson, in her official capacity as Secretary of the North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown

Kenneth Raymond, in his official capacity as Member of the North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown
Jeff Carmon, in his official capacity as Member of the North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown
David C. Black, in his official capacity as Member of the North Carolina State Board of Elections	Yes	No	Yes	9/27/2019	Unknown